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REAUTHORIZATIONS FOR HAZARDOUS MATERIALS TRANSPORTATION AND PIPELINE SAFETY

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BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

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REAUTHORIZATIONS FOR HAZARDOUS MATERIALS TRANSPORTATION AND PIPELINE SAFETY

TUESDAY, APRIL 24, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips and Pamela Garvie, professional staff members; and Linda J. Morgan, minority staff counsel.

Senator DANFORTH. This is the hearing on the reauthorization of the Hazardous Materials Transportation Act of 1974, the Natural Gas Pipeline Safety Act of 1968, and the Hazardous Liquid Pipeline Safety Act of 1979.

Senator Specter is here and he has a hearing at 10 a.m. which he must chair, and therefore I am going to ask Senator Specter if he could testify now.

STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I very much appreciate your courtesy in taking me at this time. Tuesday mornings are very busy in our institution. I have just come from the Health and Human Services Subcommittee hearing, where Senator Javits was present. I must preside at a criminal law hearing myself in just a few minutes, so I very much appreciate your taking me at this time and I shall be brief.

I would ask that my full statement appear in the record, and I shall summarize it.

Mr. Chairman, the thrust of my testimony is in support of S. 2356, a bill which I introduced on February 28 of this year, which would require the Department of Transportation, relating to highway routing through any standard metropolitan area of vehicles carrying radioactive waste material, to have those considered a major Federal action significantly affecting the quality of human environment, and requiring a detailed environmental impact statement which would, among other things, consider alternative routings.

This proposal follows the decision of the Supreme Court of the United States in denying cert on a case coming out of New York City, which is a very important matter, the case itself, but very important more broadly for its impact on many other cities, some of which could be in Pennsylvania, others could be in Missouri, or this could be anyplace in the United States.

Last year it was estimated that there were approximately 110 shipments of high-level nuclear waste transported on U.S. highways, and by the end of the century that number could rise to as many as 9,000 shipments as the capacity of storage facilities at nuclear powerplants dwindles.

The essence of the New York City case turned on that city's objection to having nuclear waste carried on highways through New York City, without the filing of an environmental impact study and without the consideration of alternative routes and alternative methods of carrying that waste. The Department of Transportation declined to follow such procedures, saying that there would not be a significant impact on the environment so as to trigger the NEPA requirement on the proposition that, even under the worst-case scenario, which is defined as a severe accident in a densely populated area leading to the release of radiation, not being likely to occur more than once every 300 million years.

I am at a loss to understand how anyone could calculate what events would occur once every 300 million years. I suggest that the factual basis for that conclusion or judgment is not necessarily sound. If it could occur even once every 300 million years, it is of sufficient importance in my judgment that we ought to have a study and consider alternative methods.

The case in New York City was subjected to a very piercing analysis by U.S. District Judge Sofaer, who analyzed the issue, I think, very well. He was overruled by the court of appeals but, as we know, one judicial opinion of a lower court may be better than the judicial opinion of a higher court. My thought is that Judge Sofaer's opinion and his reasoning are very persuasive.

He noted in his opinion that Congress has sought to channel administrative decisionmaking to assure that judgments affecting the human environment are informed by full and thoughtful evaluation of the potential environmental impact of proposed Federal actions. The process should have the agency take a hard look at environmental consequences. And as a result of that, the district judge held that, to the extent that a regulation mandates the transport to densely populated areas of a large quantity of high-level radioactive waste such as spent fuel, against the will of local and State legislatures, that an environmental impact study was necessary.

My own sense is that such a study ought to be undertaken where we deal with such a dangerous situation. It is just as simple as that, and as a very basic matter of prudence, there ought to be the consideration of alternative routes. It is my view that that was the opinion of Congress. The Federal courts have disagreed, and now it is my submission that we ought to make that plain and enact the legislation which I have proposed.

Thank you, Mr. Chairman.

Senator **Danforth**. Would the statement be required each time a hazardous material was transported through an area, or would there be kind of an all-purpose environmental impact statement which would subsequently apply in future transportation?

Senator SPECTER. Mr. Chairman, I am not sure. My sense is that there could be a general guideline environmental impact statement which could set a general standard which would govern the transportation of hazardous wastes. It may be that a more detailed study would be triggered by a specific objection lodged by a legislative body.

Senator DANFORTH. Which would be automatic?

Senator SPECTER. It might be, or it might not be.

Senator DANFORTH. But in the real world of politics, there would be a great premium for legislators to view with alarm the transportation of any hazardous material through their city, county, State.

Senator SPECTER. Well, we politicians tend to view with alarm sometimes things which perhaps should not be viewed with alarm, but very frequently we view with alarm things which ought to be viewed with alarm. That is our role.

It is not an easy question as to how far we go with this kind of an analysis, but I do believe that in the New York City case it is a clear-cut case where there should have been the consideration of alternative routes. There you have a significant danger which ought to have had such consideration. It may be that as we gain some experience here and have hazardous wastes transported, after such studies have been made, that it will not be considered such a hazard. But I think at the moment that there is great public concern, justifiably so, and there is great concern by the public officials.

But if it requires an environmental impact study on each occasion, so be it. If it requires 110 environmental impact studies during the course of 1 year, it would be my judgment that the Department of Transportation spends substantial amounts of time on matters of lesser importance at the present time.

Senator DANFORTH. But each one could then potentially give rise to litigation?

Senator SPECTER. Yes; the absence of one potentially gives rise to litigation now. And, again, it is a matter of an evaluation as to how we use our courts, and I would say that where you have diversity right-angle automobile collisions in the Federal courts taking jury trials, that a matter of this sort would be of greater importance.

Senator DANFORTH. It would give the courts something else to worry about, distract their attention from automobile accidents.

Senator SPECTER. They would have to worry about the things which are most important, and we should give them some guidance as to what we think are the things of greatest importance.

Senator DANFORTH. Thank you very much.

Senator SPECTER. Thank you, Mr. Chairman. I appreciate very much the courtesy.

[The statement follows:]

STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Mr. Chairman, I appreciate this opportunity to testify today on the important issue of the transportation of radioactive materials.

As you are aware, on February 28, 1984, I introduced S. 2356, the Urban Radioactive Materials Protection Act of 1984, to remedy the unsatisfactory situation created by the Supreme Court's refusal to hear New York city's challenge to a Federal regulation which would require the city to open its highways to trucks carrying nuclear wastes.

Last year, it is estimated, about 110 shipments of high-level nuclear wastes were transported on U.S. highways. And as the capacity of storage facilities at nuclear power plants dwindle, there could be up to 9,000 shipments a year by the end of this century.

Representing the State of Pennsylvania, which has many major cities that would be subjected to substantial risks if this regulation is to stand, and recognizing the very grave risks to the citizens in Pennsylvania and around the Nation, I believe Congress should make a clear-cut statement of policy through appropriate legislation.

Presently, the transportation of high-level radioactive waste is regulated primarily by the Department of Transportation. In January 1981, DOT issued, without the benefit of an environment impact statement (EIS), a set of regulations, known as HM-164, that established routing requirements for highway carriers of packages that contain materials exceeding specified amounts of radioactivity, which are now known as "highway-route-controlled" materials. This regulatory docket generally requires highway carriers of these materials to use the most direct interstate highway, and to avoid large cities if an interstate route or beltway is available.

Despite this latter provision, the fact is that high level nuclear waste was routed right through New York City—a major metropolitan area with 8 million persons.

Understandably concerned about the consequences of this potentially dangerous situation in such a densely populated area, New York City had banned the transportation of nuclear waste on its major roadways since 1976. At least one source, Brookhaven National Laboratories, had shipped spent fuel for its plant in Suffolk by water ever since that time.

Shortly after DOT published its rule concerning the transportation of radioactive materials, and it became clear that Manhattan would have to open its highways to trucks carrying nuclear waste, the city sued to block it, arguing that DOE had not adequately assessed the environmental risk of carrying nuclear waste through a crowded urban area. The city prevailed in the Federal District Court in Manhattan, but that decision was overturned by the U.S. Court of Appeals for the Second Circuit, which held that the Department's environmental appraisal had been adequate and that the department was not required, under existing law, to consider the use of barges as an alternative to overland transportation. On February 27, 1984, the Supreme Court refused to hear New York City's appeal, thus allowing the DOT regulations to stand.

The Department's justification for not conducting an environmental impact study as required by NEPA (National Environmental Policy Act) is that carrying nuclear waste in trucks over the interstate highway system through densely populated areas would not have a "significant" impact on the environment so as to trigger the NEPA requirement. The Department postulated that the so-called "worst case scenario," which it defined as a severe accident in a densely populated area leading to the release of radiation, is likely to occur no more than once every 300 million years.

I suggest that there is grave doubt that this estimate is correct as to the minimal danger involved. But, even if it is accurate, that is still a significant risk. It could be catastrophic for a big city, or a small city, and for the residents therein. In my opinion, there should be an EIS and a review of alternate routing, and it was with this in mind that I introduced S. 2356.

This legislation modifies NEPA to make it clear that DOT's decision to allow highway routing through any Standard Metropolitan Area of vehicles carrying radioactive waste materials which if released into the atmosphere in populated areas could be dangerous to human health is considered a major federal action significantly affecting the quality of the human environment, for which a detailed EIS is required. The provision expressly requires DOT to consider alternative routing of such shipments, such as the use of barges.

The bill would also amend the Hazardous Materials Transportation Act to require the withdrawal of the present regulations embodied in regulatory docket HM-164 pertaining to routing requirements until the EIS has been completed and considered, including the consideration of alternative modes of transportation.

While the District Court in the New York city case may not have properly evaluated the regulations under the appropriate standard for such judicial review—whether the agency was arbitrary and capricious in adopting them—the thoughtful opinion by Judge Sofaer nevertheless offers some useful insights for this legislative forum, where our considerations can, and should be, much broader. The opinion notes that "in NEPA Congress sought to channel administrative decisionmaking to ensure that judgments affecting the human environment are informed by full and thoughtful evaluation of potential environmental impact of proposed federal actions. (Cites omitted.) It is fundamental to this process that the agency must take " 'a hard look' at environmental consequences," (cite omitted), and, whenever a proposal may have some environmental impact, that it must "study, develop, and describe appropriate alternatives to recommended courses of action." 42 U.S.C. § 4332(2)(E), (case cite omitted).—*City of New York* v. *DOT*, — F. Supp. — (S.D.N.Y. 1983).

The opinion goes on to explain that central to the procedural scheme established under NEPA is the requirement that an agency "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment" a detailed EIS. 42 U.S.C. § 4332(2)(C) (1976). Judge Sofaer held that to the extent the regulation mandates the transport through densely populated areas of large quantity, high-level radioactive wastes, such as spent fuel, against the will of local and state legislatures, the finding that an EIS was unnecessary was unsupported by the record. Given the immense controversy surrounding the safety issue, I would agree with the Court's conclusion.

Requiring DOT to conduct an environmental impact study and consider the resulting EIS before preempting local regulations is not unduly burdensome. Numerous studies have been done on virtually every facet of radioactive waste transportation, and DOT may properly use these reports of other agencies in evaluating the environmental impact of HM-164; in fact, NEPA regulations encourage the use of such reports. 40 C.F.R. §§ 1500.4(n), 1506.4 (1981). But DOT has an obligation independently to evaluate what others have concluded. *Id.* § 1507.2.

The Council on Environmental Quality, authorized to promulgate regulations under NEPA, explains that "(u)ltimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. (NEPA and) (t)hese regulations provide the direction to achieve this purpose."—40 C.F.R. § 1500.1(b) and (c) (1981).

DOT recognizes that the "worst case scenario" is "credible," 46 Fed. Reg. 5299 (1981), and explains that the provision in the regulations requiring use of a circumferential route to avoid large cities where ever possible was included to "further reduce the already small, but important, possibility of catastrophic urban transportation accident." DOT Motion, "Environmental Assessment," at 19. Other sources assess the risk of urban transport to be much greater. Given DOT's own recognition of the possibility of such a catastrophic accident, and the continuing controversy over its probability and effect, an EIS certainly appears warranted.

I am not unaware of the potential problems created by suspension of the Federal regulations. But state and local concerns about the safety of highway transport of radioactive wastes through their cities cannot simply be ignored or overruled without establishing the proper foundation for Federal pre-emption. The states and municipalities and the Federal government must work together to resolve this inherent conflict between the benefits of the use of radioactive materials, the need for their safe disposal, and the need to protect the environment and human health from the risks of dangerous levels of exposure. As for the concern that suspension of Federal regulations until an EIS has been done will result in the inability of nuclear wastes to be moved at all, even if this were true, it is not at all clear that temporary storage on-site would not be preferable to transporting these wastes to what I understand are often temporary disposal sites from which the waste will eventually have to be removed and transported again to permanent sites.

This is a difficult issue, but I firmly believe that requiring an EIS and consideration of alternative modes of transportation is a prudent and reasonable response that will enhance the long-term security of human environments in urban areas and help prevent the tragedy that could result from a short-term, quick-fix solution.

Thank you.

Senator DANFORTH. Our next witness is Cindy Douglass, Administrator, Research and Special Programs Administration, U.S. Department of Transportation.

Cindy, we are delighted to have you back. I can still call you Cindy Douglass, I hope, not M. Cynthia Douglass.

STATEMENT OF M. CYNTHIA DOUGLASS, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, ACCOMPANIED BY LEE SANTMAN, DIRECTOR OF MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

Ms. DOUGLASS. No, please; that is a little too formal for me.

Mr. Chairman, let me begin by introducing Lee Santman. Lee is the Director of our Materials Transportation Bureau. Lee is the person that really knows the most, I would say, about the pipeline safety and hazardous materials transportation safety program. He runs that aspect of our Research and Special Programs Administration.

Let me say that I am very pleased to be here today in a new capacity as the Administrator of the Research and Special Programs Administration to discuss our pipeline safety and hazardous materials safety transportation programs.

Before I begin that part of my testimony, I feel it would be appropriate for me to discuss how I view my responsibilities in carrying out these transportation safety programs. My type of priority will be safety. My commitment to safety and hazardous materials transportation is very well grounded. First, it is mandated by the statutes which I will administer.

The Hazardous Materials Transportation Safety Act, the Natural Gas Pipeline Safety Act, and the Hazardous Liquids Pipeline Safety Act were designed for the purpose of protecting the Nation against the risk to life and property which are inherent in the transportation of hazardous materials in commerce.

Second, this commitment to safety is directed by Secretary Dole in the meetings she and I had discussing my responsibilities as Administrator. And, third, I believe it is the right priority for me.

With that safety commitment in mind, I will move now to discussing our hazardous materials transportation program and our pipeline safety program. I have a statement describing our program in some detail that I will submit for the record. I also will submit our authorization request, accompanied by a section-by-section analysis. My oral testimony, then, will concentrate on specific program developments and concerns in which I believe the committee is interested.

In the area of pipeline safety, the authority for our pipeline safety program derives from two statutes: the Natural Gas Pipeline Safety Act and the Hazardous Liquids Pipeline Safety Act. The Natural Gas Pipeline Safety Act, passed in 1968, authorizes RSPA, the agency I am administering, to regulate for safety purposes, interstate and intrastate natural gas pipelines. Our regulations cover more than 2,300 operators of the gas pipeline network of 1.5 million miles.

Under the Natural Gas Pipeline Safety Act, enforcement of our regulations is shared with the States. The RSPA has Federal inspectors who enforce the Federal regulations for interstate pipelines, unless a State is contracted with the agency to act as our agents in that regard. The regulations for intrastate natural gas pipelines are enforced by the States in cooperation with the Federal Government. The Federal/State cooperative effort is sustained through Federal grants to States adopting and enforcing the Federal rules.

The Federal grants available to the States currently allow reimbursement for about 30 percent of the costs of the State programs; 48 States are participating in this program, and we feel it has been a highly successful program.

The safe pipeline transportation of hazardous liquids such as gasoline and fuel oil is regulated under the authority of the Hazardous Liquids Pipeline Safety Act which was passed in 1979. Under that act, RSPA currently regulates interstate hazarous liquid pipelines. Last month, the RSPA issued a notice of rulemaking, proposing to extend that regulation to intrastate pipelines. We purposely delayed application of the rules to intrastate pipelines to afford the States time to adapt their State laws and programs to the Federal regulations; 16 States have now established jurisdiction, including California and Texas, and 6 others are seeking jurisdiction from their State legislatures.

Most of the States we consider to be essential to a successful Federal/State partnership for hazardous liquid pipelines, that is, those States with significant liquid pipeline populations, have established or are seeking jurisdiction.

One additional pillar of both Federal pipeline safety programs has been the establishment of two technical pipeline safety advisory committees. These committees are composed of industry, Government, and public representatives, and advise RSPA on our pipeline safety regulatory program. The work of these committees has helped to assure the success of our program.

I believe our program is something that we in Government and in industry can be proud of. I will submit for the record the pipeline-accident statistics, but I will point out that from 1972 through 1979, the average annual deaths resulting from gas pipeline accidents were 35, and from 1980 through 1983, the average annual deaths were 17. Last year there were 12 deaths and 245 injuries resulting from gas pipeline accidents. So there has been an improvement in our program over the years.

There are even fewer serious accidents with hazardous liquid pipelines. In 1983, there were six deaths and nine injuries resulting from 161 accidents or incidents.

Finally, with respect to our pipeline safety program, I will mention that there is a General Accounting Office draft report assessing our program and making recommendations for improvement. The report is not yet final so I cannot really address specific recommendations. However, I welcome this independent assessment of our program, and have asked my staff to study the GAO draft and recommend a course of action to me to improve our program.

I would be happy to provide you with our staff assessment and our plans to address the GAO criticisms as soon as it is completed.

In the hazardous materials area, our program is authorized under the authority of the Hazardous Materials Transportation Act. That act makes DOT responsible for assuring the safe transportation of hazardous materials by all modes. To meet this responsibility, we have a program that consists of five parts. (1) We develop and maintain regulations for hazardous materials transportation. (2) We provide for the enforcement of these regulations. (3)

We train those charged with enforcing the regulations. (4) We interact with constituency groups concerned with hazardous materials transportation. And (5) we provide assistance to those who must respond to hazardous materials transportation accidents.

My statement submitted for the record describes each program in some detail, but I would prefer in my oral testimony to focus attention on our enforcement program, our constituent consultation program, and our emergency response program because I believe that developments in those areas have the greatest potential for improving our hazardous materials transportation program.

Like the pipeline safety enforcement program, enforcement of hazardous materials transportation regulations necessarily requires the Federal/State cooperative effort. Because of the vast number of trucks carrying hazardous materials, the assurance of regulatory compliance with the Federal rules is virtually unachievable through an exclusively Federal enforcement effort. Therefore, several years ago, we established the State hazardous materials enforcement development program. The purpose of that program was to engage the States in complementary enforcement activities. Under this program we furnish technical and financial support to States that have provided for the adoption of the Federal regulations. Twenty-five States have received Federal assistance under this program.

Last year the program was boosted by congressional passage of the Surface Transportation Assistance Act. Section 402 of that act created a new grant in aid program for motor carrier safety enforcement, which is administered by the Bureau of Motor Carrier Safety. And as I remember it, Senator Danforth, you were the original sponsor of that provision and the Senate Commerce Committee moved forward on that, and that is one of the main reasons it got into the act. It has helped our enforcement efforts tremendously because I believe that a number of additional States have come on board since that time, and in fact I am told that our expectations are that by the end of the school year 1985, all 50 States will have essentially adopted our Federal hazardous materials transportation regulations and be enforcing them and receiving money under the section 402 grant program.

While this Federal/State cooperative effort will greatly enhance our hazardous materials transportation safety program, there do remain hazardous materials enforcement problems that require capabilities not available within the States or within the specific DOT modal administrations responsible for enforcement. Accordingly, we have requested for fiscal year 1985 appropriations, money for expansion of our effort.

This increase in appropriations will enable the RSPA to hire seven enforcement specialists. Your support of the expansion of our program would be most helpful.

Another very important part of our hazardous materials transportation program is our interaction with members of the regulated community, concerned public citizens, and the State and local government officials responsible for implementing related government policy at the local level.

A number of recent suggestions from program constituents have persuaded us that our process for obtaining advice and information from knowledgeable outside parties should be formalized. Accordingly, we have established a new national hazardous materials advisory committee to advise the Secretary on matters relating to our hazardous materials transportation safety program. The aforementioned developments give confidence that we are moving surely and steadily toward an effective national scheme for enforcing the hazardous materials safety regulations. But even so, we cannot eliminate all accidents involving the release of hazardous materials.

In the event of such an accident, it is vital that efforts to mitigate the hazards be initiated as rapidly as possible. A primary objective in the area of emergency preparedness is to assist local jurisdictions by providing guidance and information for emergency response. In our program right now, we have developed three different mechanisms that assist local and State people in responding to accidents. That is in my full statement in some detail. It is the U.S. Coast Guard operated National Response Center, the chemical industry operated CHEMTREC, and we have developed an emergency response guidebook that helps the States and local personnel in knowing how to respond to accidents in different types of hazardous materials.

But even so, many State and local officials continue to assert that their emergency response agencies lack the sufficient training, equipment, information, and guidance to properly plan for and respond to hazardous materials emergencies. Representatives of industry, government, and the general public have encouraged greater Federal involvement in emergency response planning.

Most recently, a coalition for hazardous materials transportation safety has proposed that State and local emergency preparedness and training programs be funded through a registration fee to be collected from hazardous materials shippers and carriers and disbursed by DOT. The coalition has also proposed amending the Hazardous Materials Transportation Act to establish exclusive Federal regulatory authority over shipper, carrier, and container manufacturing standards and to allow concurrent Federal, State, and local jurisdiction over hazardous materials routing and notification standards.

We have studied the coalition proposal carefully and see much merit in it. We do have substantial reservations concerning specific features of the proposal; in particular, the creation of a new categorical trust fund and the cumbersome associated administrative apparatus.

Secretary Dole has directed RSPA to develop alternative proposals to accomplish the worthy objectives of the coalition proposal, while trying to avoid its procedural shortcomings. Secretary Dole has personally urged me to give this project the highest priority, and I am hopeful that we will succeed in formulating an acceptable practical solution.

That concludes my statement, and I would be pleased to answer your questions.

Senator DANFORTH. OK, Cindy. Thank you.

I think perhaps the common thread that runs through your testimony and through Senator Specter's testimony, and I am sure some of the other witnesses' testimony, is what should be the appropriate role of local governments and State governments in both the hazardous materials area and the pipeline area, although it is, I think, a more volatile question with respect to hazardous materials.

Do you have a general philosophy in approaching this question?

Ms. **Douglass**. Well, definitely. With all of my work on the safety programs that I have worked on through the years, I have given that a lot of thought. And I guess I really do believe that the Federal Government has a very legitimate role in safety, for a number of reasons.

One is that I really do think that we have in our country 50 different jurisdictions with limited resources, all looking at safety problems and all concerned about safety problems. And I think that if the Federal Government can take a look with the 50 jurisdictions at that problem and get information out to the different States, we can have a better safety program, and it will not be as expensive as having each of the 50 States do it themselves.

Senator **Danforth**. Nor as chaotic.

Ms. **Douglass**. And the second thing is that I think when you have 50 different States with different ideas, having their own safety regulations, I really do think that it does create confusion and chaos, and I think that if we can have a general Federal scheme that does provide for some uniformity, I believe that does enhance public safety.

At the same time, I think there are legitimate State concerns and issues, and I think that——

Senator **Danforth**. What are they?

Ms. **Douglass**. Well——

Senator **Danforth**. To play the devil's advocate, I take it that the Department of Transportation is interested in safety.

Ms. **Douglass**. Yes.

Senator **Danforth**. And the Department of Transportation is interested in preventing catastrophes, and the Department of Transportation is interested in responding to catastrophes, and the Department of Transportation has, I hope, a staff of people who have some degree of expertise in these areas.

What would a State or locality add to that?

Ms. **Douglass**. Well, I think that a number of things. One is that, for example, in our Federal regulatory program we can have regulations, but how do we enforce those regulations at the State and local levels? We need the cooperation of the State and local officials.

Senator **Danforth**. Why?

Ms. **Douglass**. Because I believe that we are going to have to work with them in terms of enforcement. We are going to have to have a Federal scheme that is enforced. We have to have the State and local police force. We have to sort of plug into that.

And I think, as a practical matter, they want to be involved. Their citizens are living there, and I think that the city and local people want to be involved with not only the enforcement, but input into——

Senator **Danforth**. Other than the enforcement, does their involvement, in fact, make things safer?

Ms. **Douglass**. Well, I really do believe that overall there should be a Federal approach. However, I think there are some situations where maybe there is going to be like a highway, an interstate system, for example, that we think would be the safest transportation route. However, I may not be aware at the Federal level that there is construction being done on the interstate route, and perhaps there is another route that would be safer. And I think that the State entities are in a better position to assist us.

Senator DANFORTH. Can't they just get on the phone and say hey, we would like you to consider this construction?

Ms. DOUGLASS. Yes; and essentially I am saying that I want to work with the States. And if—at the same time, how do you draft the statute to make sure that there is a Federal—general Federal approach, and at the same time make sure that the Federal people do take into consideration some legitimate interest of the States and cities.

That is a very difficult question. How do you balance the statute, and how do you draft something so that you do not end up with a——

Senator DANFORTH. I have a concern, and we tried in that omnibus safety bill, initially at least, to have a hazardous materials section, and then backed off, because there is nothing more controversial than this.

The real life political situation is that a person in any elective office, whether it is the State legislature, city council, whatever, a person in any elective office does not make the headlines nor gain public support by saying hey, there is no problem here, or by saying there are people with technical expertise; let them decide how this material is transported. No.

The political upper hand is to the politician who views with alarm and who says not through my county, not through my city, not through my State. If State and local governments are going to get into the business of doing more than just enforcing, but really making decisions as to what can travel through where, and if they are going to be able to say no when the Department of Transportation says yes, then there is going to be enormous pressure on them to say no, and there is going to be absolutely no political benefit to the local politician who says fine with me. I mean he is going to be a dead duck in the next campaign.

There is no area, no area that I can think of, that is a greater invitation to demagoguery of politicians than the transportation or disposal of dangerous things. I mean people can make political careers by mounting their platform and saying not here; this is dangerous.

How can we get away from that, unless we have somebody who is in charge with the job of transporting in interstate commerce hazardous materials in a safe manner? And if the commerce clause does not give that responsibility to the Federal Government, to whom does it give the responsibility? Or am I all wet?

Ms. DOUGLASS. No; I do agree with that. I know that 3 years ago, when we were addressing this issue, you had the same concerns, and a number of people did, and in the 3 years since—I believe it is about 3 years ago—some very good things have occurred.

This coalition of industry people and the State and local people I think have come to some kind of general agreement that you have—you are right. And I believe that they have tried to put in this proposal some language to address your concerns.

At the same time, the States and cities are very concerned about the emergency response planning for an accident that does occur, and I think that industry has made some tremendous strides in working with the States and cities to develop something. I see my job in the next few months as trying to put together a plan that we can come up to the Hill with and combine both the concerns that you just mentioned regarding the Federal role and the State role, and also have some sort of plan for emergency response preparedness.

Senator DANFORTH. Let me ask you, if you had a scale between zero and 10, 10 not being perfect because nothing in the world is perfect, but 10 being the optimum, where would you place our governmental activities on the question of hazardous materials transportation?

Ms. DOUGLASS. Well, I guess I would say somewhere in the neighborhood of a seven, because I think we have done a very good job because we have a good regulatory program; I think it has been responsive to the concerns; and I think we can see that in the accident statistics and that sort of thing.

I think that last year—I have forgotten the statistics, but how many deaths in hazardous materials—12? I believe it is something like that. So I think that that shows that we have a fairly good program in that regard.

There are certain areas that I think need improvement. I feel that in the enforcement area, we have made great strides there because we are heading toward all 50 States adopting the Federal rules and agreeing to enforce them. I think in the area of emergency response, we have—I believe we have some more work to do, and I think that can be improved. And hopefully, when we do that, we will move up to an 8 or a 9.

Senator DANFORTH. So that emergency response is the great area that we should work on?

Ms. DOUGLASS. Yes, if I had to pick out one area, I think that is the most important.

Senator DANFORTH. How should we do that?

Ms. DOUGLASS. Well, I have been directed by Secretary Dole to look at that area and see what different types of proposals would make sense and to develop proposals that do make sense, and we are going to look at a number of different things. We are going to look at the user fee concept that was presented by the coalition. We are going to be talking with the EPA to discuss various ideas that they might have and different programs that they might have for emergency response. I have set up some meetings already with the coalition who have different ideas. They have several, I think, good ideas and I have met with—I intend to meet many times with them and with the whole coalition and with the different parts of that coalition separately.

Senator DANFORTH. Is there anything Congress should be doing to improve our score from 7 to 9?

Ms. DOUGLASS. Well, I would like to have the opportunity to take maybe a couple of months to work with the different groups and then make recommendations to you on what to do. I suspect that we may need some sort of legislative help on this, but I do not want to say that for sure because, you know, I feel like I need to get in there and really see what we could do.

Senator DANFORTH. OK. Well, if anything occurs to you, I think you know the Commerce Committee personnel pretty well, and you know where to reach us.

How about pipeline safety? I guess the main question here is grants in aid. Would that be the primary issue? To what extent should the Federal Government be helping to pay for the cost of State efforts?

Ms. DOUGLASS. Well, I think that that probably is the main issue here.

Senator DANFORTH. Now, you suggest no funding for hazardous liquid pipeline State enforcement and 30 percent for natural gas pipeline State enforcement. Does that represent budgetary considerations? In other words, is that because of OMB, or is that your own judgment as to the effectiveness of State programs?

What is the reason for this small funding—from zero in one case, and 30 percent in the other?

Ms. DOUGLASS. Well, I think that one consideration is budgetary constraints, but I do not think that that is the only consideration, because I believe that if we felt that our safety program was on the decline in terms of safety, we would ask for more funding for grants in aid. But I think that we looked at the program very carefully in terms of natural gas grants in aid, and we felt that 48 States are participating and the States have not dropped off their level of enforcement.

I believe, Lee, you were just at a meeting with State pipeline people, and you asked that question of the State pipeline people as to what is your level of involvement in this program: Is it being reduced because the Federal Government is not funding at a higher level reimbursement? And what was their response?

Mr. SANTMAN. I think there is always a general feeling that they could use more money, but buried in those kinds of responses, and not too deeply buried, I believe, was a message that the States are solidly established in these program areas. They are not going to drop out, but they hope we do not see any more cuts coming down the line on their program.

There are a couple of States that are experiencing severe financial problems.

Senator DANFORTH. Well, in the case of liquid pipelines, you could give them an absolute guarantee that there will not be any more cuts.

Ms. DOUGLASS. In the liquid area, I believe that we looked at whether to ask for specific funding in grants in aid to the States, and we felt that our program in that regard is moving along. We are working with the States; 16 States have already established jurisdiction or are in the process of establishing programs, that sort of thing. I think six or seven more States are getting ready to adopt. Those States make up most of the States where there is a significant number of hazardous liquid pipelines.

I guess our feeling on that is that we are going to watch that very carefully, and if there seems to be a need for a grant, a State grant-in-aid program will be back, will be back here. But I think the feeling right now is that we do not really think that there is a need for that program for Federal grants-in-aid to the States.

Senator DANFORTH. For the liquid pipelines.

Ms. DOUGLASS. Yes; the States are developing the programs.

Senator DANFORTH. Are they important programs, or are they not so important?

Ms. DOUGLASS. My feeling on the pipeline programs is that pipelines do transport hazardous materials. Gasoline and natural gas are hazardous materials. However, I think that so far it seems to me that they have been transported very safely. I think that our statistics are very good in that regard, and I think that is a credit to industry and to Government.

I think at the same time, that the public wants a pipeline safety program and wants the Federal Government to have regulations and to enforce the regulations. So in that regard, I think that the pipeline safety program is very important, and I think it has improved the safety, and I think it does help us to achieve a certain high degree of safety.

So I believe the program is very important and worthwhile. But at the same time, I am not sure that we should be taking resources away from other safety efforts and putting them into pipeline safety inspection.

[The statement follows:]

STATEMENT OF M. CYNTHIA DOUGLASS, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Good morning. I am delighted to be here today in my new capacity as Administrator of the Research and Special Programs Administration (RSPA) to discuss authorization of our pipeline and hazardous materials transportation safety programs.

My statement today will highlight the recent progress we have made toward fulfilling our mandates under the three satellites that guide RSPA's program—the Natural Gas Pipeline Safety Act of 1968 (NGPSA), the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), and the Hazardous Materials Transportation Act of 1974 (HTMA).

We are seeking the following authorizations for fiscal year 1985:

> Under the NGPSA, a total of $6.9 million—$3.4 million for the associated expenses of the Federal natural gas pipeline safety program conducted by the Materials Transportation Bureau and $3.5 million for grants-in-aid to help support state-administered gas pipeline safety programs;
>
> Under the HLPSA, $900,000 to carry out the hazardous liquid pipeline safety program; and
>
> Under the HMTA, $7.3 million to meet our hazardous materials transportation safety responsibilities.

PIPELINE SAFETY

Natural Gas Pipeline Safety Act

The Natural Gas Pipeline Safety Act (NGPSA) of 1968 provides for Federal safety regulation of facilities used in the transportation of natural and other gases by pipeline. The NGPSA provides a framework for assuring pipeline safety that comprises three components—the primary jurisdiction of the Federal government over interstate pipelines, the State program mechanism by which States oversee intrastate pipeline safety, and an agency relationship between the Federal government and the States whereby the latter exercises the inspection authority of the Federal government on interstate pipelines. The Department's responsibility for safety regulation of natural gas pipelines involves more than 2,300 operators of a gas pipeline network of over 15 million miles.

The cornerstone of the Federal gas pipeline safety program is the cooperative program we have established with the States. The NGPSA provides that States that undertake to establish regulatory and enforcement authority for intrastate natural gas pipelines may be reimbursed for up to 50 percent of expenses incurred in running their programs. Participating States have adopted the Federal pipeline safety regulations and enforce them with sanctions substantially the same as those employed by the Department. The Federal government is currently reimbursing the States for approximately 30 percent of their costs.

The efforts of State programs have encouraged natural gas pipeline operators to devote increased resources and improved state-of-the-art technology to the design, construction, operation, and maintenance of their systems and to develop more effective training and public awareness programs. Operator improvements have mitigated the deterioration of thousands of miles of pipelines and have resulted in the replacement of substantial portions of obsolete and degraded systems.

The most tangible indication of the success of RSPA's natural gas pipeline safety program is the reduction we have seen in the number of pipeline accidents and casualties resulting from those accidents: gas pipeline accidents decreased 24 percent between 1978 and 1983, fatalities resulting from such accidents declined 61 percent and injuries 39 percent in the same period.

The most common cause of serious pipeline accidents is outside force damages, usually caused by excavation or drilling and usually beyond the control of a pipeline operator. In an attempt to reduce such accidents, RSPA a year ago put into effect new pipeline regulations to require pipeline operators to participate in damage prevention programs. These programs, typically invoving the participation of the pipeline operator in a local "one-call" utility locator system, serve to alert persons contemplating excavation in the area where a pipeline is located of the exact placement of the pipe so that it may be avoided.

We are in the process of evaluating the impact of the new standard. Early indications are that it is having the intended effect of reducing outside force damage to pipelines, and, thus, of reducing serious pipeline accidents still further.

Hazardous Liquid Pipeline Safety Act

The Hazardous Liquid Pipeline Safety Act (HLPSA) of 1979 granted the Department of Transportation substantial new regulatory authority over pipelines transporting hazardous liquids (e.g., gasoline, fuel oil) that mirrors that granted by the NGPSA for gas pipelines. The act includes provisions that allow for Federal safety standards for hazardous liquid pipelines; a Federal/State partnership for regulating intrastate pipelines with Federal financial assistance to State agencies participating in the program; and establishment of civil enforcement remedies for violations of the Federal standards.

RSPA has exerted its authority over interstate hazardous liquid pipelines, but has delayed formal implementation of the Federal/State cooperative program over intrastate hazardous liquid pipelines to allow States the necessary time to determine the extent of intrastate involvement, to enact enabling legislation, and to develop the other regulatory tools required to administer statewide programs.

Sixteen States have now established jurisdiction including California and Texas and six others are seeking jurisdiction from their State legislatures for intrastate hazardous liquid pipelines. Most of the States we consider to be essential to a successful Federal/State partnership program for hazardous liquid pipelines—that is, those with significant liquid pipeline populations—have established or are seeking jurisdiction. In support of these State program developments, last month we issued a notice of proposed rulemaking to extend application of the Federal regulations to intrastate hazardous liquid pipelines. This represents the first step toward implementation of a cooperative Federal/State program for hazardous liquid pipeline safety.

One additional pillar of both pipeline safety programs has been the establishment of technical pipeline safety advisory committees. These committees, mandated by statute, are composed of representatives of industry, government and the public. The committees meet periodically and give the RSPA advice on our pipeline safety regulatory program. The work of these committees has halped to assure the success of our program.

HAZARDOUS MATERIALS

The Hazardous Materials Transportation Act of 1974 provides the primary legislative authority for our hazardous materials safety program. That act makes DOT responsible for assuring the safe transportation of hazardous materials by all modes.

To meet this responsibility, RSPA conducts a multi-faceted regualtory program that consists of five interrelated parts:

We develop and maintain regulations governing all aspects of hazardous materials transportation;

We provide for enforcement of the regulations to assure industry-wide compliance;

We train those charged with enforcing the regulations;

We interact with constituency groups concerned with hazardous materials transportation safety; and

We provide assistance to those who must respond to hazardous materials transportation accidents.

I would like to address each of these program parts in turn.

Regulatory program

The RSPA develops and issues regulations governing hazardous materials transportation by all modes (excluding bulk transportation by vessel, standards for which are developed by the U.S. Coast Guard). The Federal regulations cover definitions and descriptions of hazardous materials; hazard communication, including preparation of shipping papers, package labeling, and vehicle placarding; packaging requirements and specifications for containers authorized for shipment of hazardous materials; and loading and handling procedures for shippers and carriers. The regulations apply to air, rail, vessel, and highway transport.

Recent accomplishments of the hazardous materials regulatory program include:

An ongoing program of regulatory revision and reform that has made substantial progress toward clearer, more concise regulations that allow for technological advances and innovative practices. In 1984, we expect to complete revision of the standards applicable to transportation of explosives to eliminate areas of confusion and redundancy and to make them consistent with international shipping standards.

Last month we issued, in concert with EPA, rules requiring the use by transporters of hazardous wastes of a Uniform Hazardous Waste manifest form. This form will facilitate the implementation of the mandate of the Resource Conservation and Recovery Act that hazardous wastes be tracked from the point of generation to the point of final disposal. The Uniform Manifest has the added benefit of replacing a multiplicity of State manifest forms, thereby contributing to a greater likelihood of compliance by transporters.

Review and improvement of the regulations applicable to cargo tanks used to transport hazardous materials. In 1983, RSPA established a new specification for the manufacture of cargo tanks that carry cryogenic liquid and added greater flexibility for use of certain tank cars and cylinders for cryogenic liquid service. This rulemaking resulted from an operating history developed over several years under exemptions issued by DOT.

Continued leadership in the work of internaitonal standards-setting organizations to promote both enhanced safety and an increased level of international regulatory harmony that simplifies the movement of hazardous commodities between nations. In this regard, we are proceeding with development of a notice of proposed rulemaking that would incorporate the accepted international scheme of performance standards for nonbulk hazardous materials packagings into the domestic hazardous materials transportation regulations.

Enforcement program

Responsibility for enforcement of the Federal hazardous materials transportation regulations is divided among several of the Department's operating administrations. RSPA is responsible for enforcement of regulations other than those applicable to a single mode of transportation. We thus place primary emphasis on enforcement of regulations for manufacturers, reconditioners, and retesters of DOT specification containers and multimodal shippers of hazardous materials. The other operating administrations—U.S. Coast Guard, Federal Aviaton Administration, Federal Highway Administration, and Federal Railroad Administration—retain jurisdictional responsibility for enforcement action relating to transportation by water, air, highway, and rail respectively.

Because of the vast numbers of trucks carrying hazardous materials, the assurance of regulatory compliance is virtually unachievable through an exclusively Federal enforcement effort. A Federal/State enforcement effort is absolutely essential to the Federal regulatory program. Therefore, several years ago, we established the State Hazardous Materials Enforcement Development Program. The purpose of the program was to engage the States in complementary enforcement activities. Under this program, we furnish technical and financial support to states that have provided for adoption of the Federal hazardous materials transportation safety regulations. Our assistance enables states to develop enforcement capabilities within existing public safety agencies (most commonly the highway patrol), thereby vastly increasing resources devoted to enforcing nationally uniform transportation safety standards. Twenty-five States have received Federal assistance under this program.

Last year the program was boosted by Congressional passage of the Surface Transportation Assistance Act. Section 402 of that Act created a new grant-in-aid program for motor carrier safety enforcement, administered by the Bureau of Motor Carrier Safety, a large share of which concerns hazardous materials. Members of the Senate Commerce Committee were the original sponsors of this provision.

By the close of Fiscal Year 1985, we are hopeful that all 50 States will have essentially adopted the Federal hazardous materials transportation standards and be participating in this program.

While this Federal/State cooperative effort will greatly enhance our hazardous materials transportation safety program, there remain hazardous materials enforcement problems that require capability not available within the States or within the DOT modal administrations responsible for enforcement. Accordingly we have requested FY 1985 appropriations to enable a small but critical expansion of the current RSPA enforcement effort. This increase in appropriations will enable the RSPA to hire seven enforcement specialists with the management and technical capability needed to handle transportation problems that transcend geographical boundaries, modal limits, or agency jurisdictions. With the cooperation of state and local governments, other Federal agencies, foreign countries, and international agencies concerned with hazardous materials transportation, the augmented RSPA enforcement staff will investigate major cross-cutting non-compliance problems and be able to move quickly to effect appropriate corrective actions. Your support of this expansion of our program would be most helpful.

Training

A particularly important aspect of the national program to assure safety in the transportation of hazardous materials is the provision of appropriate training to the public and private sector personnel who work in the field.

Under the Hazardous Materials Transportation Act, DOT's primary role is one of accident prevention through standard-setting and enforcement. Our major training effort, therefore, is directed at Federal and state enforcement personnel.

The Secretary of Transportation established the Transportation Safety Institute (TSI) in 1971 as part of the Department's effort to reduce the number of transportation accidents in the United States. In broad terms, TSI's mission is to improve transportation safety and security management, technology, and operating procedures by designing and conducting training programs responsive to modal and intermodal requirements. Hazardous materials transportation safety is one of the subject areas for which TSI provides training services. This training is made available to Federal state, and local government personnel, as well as to industry and international government agencies.

Until recently, the bulk of TSI's training program was available only at its training center in Oklahoma City, which meant that class size was limited and that state and local governments had to provide travel and living expenses for those sent to TSI for training. In the last several years, however, TSI has implemented a program designed to make hazardous materials training courses more generally available, more easily accessible, and less expensive to attend by conducting a series of training programs at various field locations throughout the country. The sessions have been well-received and very well-attended, and current plans call for this decentralized approach to continue and expand as resources permit. RSPA has developed a self-study course for state enforcement specialists which TSI has used very successfully in combination with its own resident enforcement training. When an enforcement specialist completes the self-study course prior to attending TSI training, that enforcement specialist requires only one week of resident training compared to the normal two weeks needed without prior home study. This approach to training allows us to provide technical information and guidance to a significantly greater proportion of our constituency than could be reached within the same budget by exclusive reliance upon direct classroom instruction.

Constituent consultation

Another very important part of our hazardous materials transportation program is our contact and interaction with members of regulated community, concerned public citizens, and the State and local government officials responsible for implementing related government policy at a regional level.

RSPA has engaged in close and frequent dialogue with representatives of state and local government, other concerned Federal officials, and with industry organizations. Our contacts with these parties have generally been informal. A number of recent suggestions from various program constituents have persuaded us that our process for obtaining advice and information from knowledgeable and interested outside parties should be made more formal and structured.

We have accordingly established a new National Hazardous Materials Transportation Advisory Committee, under authority of HMTA and the Federal Advisory Committee Act, to advise the Secretary on matters relating to our hazardous materials safety program. We expect it to provide a uniquely apt forum for the development, consideration, and communication of information from a knowledgeable independent perspective. The Committee will be a valuable resource for identifying issues of common concern, evaluating approaches and solutions, and communicating broad-based, non-Federal recommendations resulting from joint deliberations.

Emergency response

The aforementioned developments give me confidence that we are moving surely and steadily toward an effective national scheme for enforcing the hazardous materials safety regulations. But even so we cannot eliminate all accidents involving the release of hazardous materials.

In the event of such an accident it is vital that efforts to mitigate the hazards be initiated as rapidly as possible. For this prompt response to be possible, a number of actions must be taken, including: (1) notification of appropriate Federal, State, and local government agencies that a hazardous materials incident has occurred; (2) proper identification of the physical or chemical properties of the released material; (3) determination of the most effective way to safeguard life, property, and facilities from the associated hazards; and (4) use of the most effective methods to clean up the spill and to restore normal conditions. State and local jurisdictions have the primary role in responding to transportation emergencies because of the infinite number of possible accident sites, the wide range of materials which may be involved, and the critical need for immediate action. Our primary objective in the area of emergency preparedness is to assist local jurisdictions by providing guidance and information for emergency response.

An important, RSPA-supported mechanism for assisting government agencies in providing emergency services when hazardous materials incidents occur is the Coast Guard-operated National Response Center (NRC). The NRC, which was established in August 1974, provides a communications network which can notify appropriate State and local officials of a hazardous materials incident.

The NRC is data-linked to CHEMTREC, a service of the Chemical Manufacturers Associated, which provides a centralized source of chemical emergency response information and assistance on a round-the-clock basis. CHEMTREC does not operate under a legislative mandate, but rather is a chemical industry-supported system for providing assistnce to anyone requesting help during an emergency arising from the accidental release of chemicals. CHEMTREC maintains a data base containing specific information concerning more than 18,000 chemicals. Both the NRC and CHEMTREC response centers provide toll-free, 24-hour service to emergency services personnel who are responding to hazardous materials incidents.

As part of the effort to improve emergency response capabilities at the state and local levels of government, we have developed and distributed to all known State and local fire and police departments a Hazardous Materials Emergency Response Guidebook (ERG). The ERG is designed to meet the needs of various government agencies directly involved in responding to accidental releases of hazardous materials during transportation, and is being biennially updated to reflect changing information and technology. Under a mandatory identification system, four-digit numbers identifying the hazardous material being transported must be shown on orange display panels or on the placards that are required on tank trucks, rail cars, and portable tanks carried on vehicles. The ERG enables persons who are unfamiliar with chemical names to identify a hazardous material through the use of the four-digit number, and to determine what safety measures should be taken immediately in the event of an accidental release. It is intended for use by fire fighters, police, and other emergency services personnel as a guide for initial actions to be taken to protect themselves and the public when they are called on to handle incidents involving hazardous materials. Initial emergency response guidance is provided for virtually all hazardous materials that are transported in the United States.

The ERG was updated and reissued this year. We are in the process of distributing 750,000 copies to State and local emergency responders.

Notwithstanding these efforts, many State and local officials continue to assert that their emergency response agencies lack the sufficient training, equipment, information and guidance to properly plan for and respond to hazardous materials emergencies. Representatives of industry, government, and the general public have encouraged greater Federal involvement in emergency response planning.

Most recently, this "Coalition for Hazardous Materials Transportation Safety" has proposed that State and local emergency preparedness and training programs be funded through a "registration fee" to be collected from hazardous materials shippers and carriers and disbursed by DOT. The Coalition has also proposed amending the HMTA to establish exclusive Federal regulatory authority over shipper, carrier, and container manufacturing standards and to allow concurrent Federal, State and local jurisdiction over hazardous materials routing and notification standards.

We have studied the Coalition proposal carefully and see much merit in it. We have substantial reservations, however, concerning specific features of the proposal, in particular, with the creation of a new categorical trust fund and its cumbersome associated administrative apparatus.

Secretary Dole has directed the RSPA to develop alternative proposal to accomplish the worthy objectives of the Coalition proposal while avoiding its procedural shortcomings. We have given this project the highest priority. I am most hopeful that we will succeed in formulating an acceptable practical solution.

Members of the Committee, that concludes my statement. I will be pleased to respond to any questions you may have.

Attachments.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 17, 1984.

HON. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed bill, "To amend the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986."

The proposed bill would amend the Natural Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, to authorize appropriations for pipeline safety programs for fiscal years 1985 and 1986.

The proposed legislation will not adversely affect the environment, nor will it have an inflationary impact on the economy.

The Office of Management and Budget has advised that enactment of the proposed legislation is in accord with the President's program.

Sincerely,

ELIZABETH HANFORD DOLE.

A BILL To amend the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684) is amended as follows:

(a) In subsection (a) thereof by striking out the period after "1981" and adding the following: ", and $3,400,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary for the fiscal year ending September 30, 1986", and

(b) In subsection (b) thereof by striking the period after "1981" and adding the following: ", and $3,500,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary for the fiscal year ending September 30, 1986."

SEC. 2. Section 214 of the Hazardous Liquid Pipeline Safety Act of 1979 is amended in subsection (a) thereof, by striking out the period after "1981" and by inserting therein a semicolon and adding the following:

"(3) $900,000 for the fiscal year ending September 30, 1985; and

(4) such sums as may be necessary for the fiscal year ending September 30, 1986."

SECTION-BY-SECTION ANALYSIS

Section 1: The proposed bill provides an authorization of $3,400,000 for continued operation of the pipeline safety program for the transportation of natural gas under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended. A separate amount of $3,500,000 is authorized to administer the grant-in-aid program for the States which assist DOT in the enforcement of the NGPSA and the pipeline safety regulations applicable to the transportation of natural gas.

Section 2: The bill also authorized $900,000 for the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (Pub. L. 96-129) in fiscal year 1985.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 20, 1984.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed bill,

"To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal year 1985 and for other purposes."

The proposed bill would amend the Hazardous Materials Transportation Act to authorize appropriations for the Department of Transportation to carry out functions assigned to it with respect to the transportation of hazardous materials.

Section 4 of the proposed bill authorizes cooperative action between the Secretary and established private agencies in performing the Department's emergency response functions.

The remaining provisions which are more fully explained in the accompanying section by section analysis provide minor procedural improvements of the existing administration of the Hazardous Materials Transportation Act.

The proposed legislation will not adversely affect the environment, nor will it have an inflationary impact on the economy.

The Office of Management and Budget has advised that enactment of the proposed legislation is in accord with the President's program.

Sincerely,

ELIZABETH HANFORD DOLE.

Enclosures.

A BILL To amend the Hazardous Materials Transporation Act to authorize appropriations for fiscal year 1985 and for other purposes as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

SECTION 1. Section 103 of the Hazardous Materials Transporation Act (49 U.S.C. 1802) is amended—

(1) by striking the semicolon after "Clause (A)", adding a period in lieu thereof, and adding the following sentence ". Commerce does not include transportation performed (1) in a vehicle, aircraft or vessel that is owned and operated by a governmental entity and which is used for non-commercial purposes, or (2) under the exclusive direction and control of a governmental entity under conditions prescribed by the Secretary;"

(2) by adding immediately after the text of subparagraph (2), the following revised subparagraph (3):

"(3) "person" means an individual, firm, co-partnership, corporation, company, association, joint-stock association, government, or agency or instrumentality of any government, and includes any trustee, receiver, assignee, or similar representative thereof, but does not include (a) the United States Postal Service, or (b) for the purposes of section 110 and 111 of this title, any agency or instrumentality of the Federal Government;"

(3) by redesignating subparagraphs (3), (4), (5), (6), and (7) as subparagraphs (4), (5), (6), (7), and (8), respectively.

SEC. 2. Section 107(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1806(a)) is amended by striking out the words "or renewal" in the fourth sentence.

SEC. 3. Section 108(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1807(b)) is amended—

(1) by striking out everything after "include," and

(2) by inserting in place thereof the following: "any material which the Secretary determines is of such low order of radioactivity that when transported it does not pose an unreasonable hazard to health or safety."

SEC. 4. Section 109(d) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(d)) is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by redesignating paragraphs (1), (2), and (3), as subparagraphs (A), (B), and (C) respectively; and

(3) by adding at the end thereof the following new paragraph:

"(2) Nothing in this subsection shall be construed to limit the authority of the Secretary to enter into a contract with a private entity for use of a supplemental reporting system and data center operated and maintained by such entity."

SEC. 5. Section 109(e) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(e)) is amended—

(1) by deleting the date "May 1" and substituting in place thereof the date "June 15"; and

(2) by deleting the words "and exemptions" in subparagraph (2) and inserting the word "and" after the word "criteria."

SEC. 6. Section 112(c) of the Hazardous Materials Transportation Act (49 U.S.C. § 1811(c)) is amended—

(1) by deleting "or" and inserting a comma in its place, and

(2) by inserting before the period the words "or to any matter which is subject to Federal postal laws or regulations in or under this title, title 18, or title 39, United States Code."

SEC. 7. Section 115 of the Hazardous Materials Transportation Act (49 U.S.C. 1812) is amended—

(1) by striking out "and" after "1978,"; and

(2) by inserting immediately before the period at the end thereof the following: "*, not to exceed $7,300,000 for the fiscal year ending September 30, 1985,* and such sums as may be necessary for fiscal year 1986.

SECTION-BY-SECTION ANALYSIS

Section 1: The amendment to the definition of "Commerce", is a companion proposal to the addition of a definition of "person". When taken together, these changes would clarify the fact that the Hazardous Materials Transportation Act and the hazardous materials regulations adopted thereunder are not intended to apply to transportation in vehicles, vessels, or aircraft that are owned and operated by governmental entities when those operations are for non-commercial purposes. In recognition of the fact that, through various types of contractual and lease arrangements, governmental entities engage otherwise commercial carriers to carry commodities exclusively for those entities, language would be added to the definition to formally acknowledge the Secretary's authority to except such operations from the Act and the regulations when conducted under the exclusive direction and control of the governmental entity. For example, certain Department of Energy contractors and subcontractors would be excepted from coverage as described in 49 CFR § 173.7(d), as would aircraft operators pursuant to lease arrangements providing the direction and control prescribed in 49 CFR § 175.5. An example of operations that would not be excepted is the operation of government-owned and operated foreign air carrier aircraft in commercial hazardous materials transportation.

In conjunction with the exception proposed in the definition of "commerce," the definition of "person" clearly establishes the jurisdiction of the HMTA over governmental entities when they engage in commercial transportation (offering for transportation for commercial purposes or transporting for commercial purposes.)

As proposed, the word "person" would include any government agency or instrumentality thereof, with the following exceptions:

(1) The United States Postal Service; and

(2) Any Federal agency or instrumentality thereof with respect to section 110 of the HMTA (civil and criminal penalties) and section 111 (specific relief).

The exception for the U.S. Postal Service recognizes the statutory responsibilities over mail transportation assigned to the Postal Service (18 U.S.C. 1702, 1715, 1716 (a) through (e), (g) and (h); 39 U.S.C. 3623(d), 5401; and 49 U.S.C. 1375(a)). Furthermore, the safety record established by the transportation of hazardous materials in the mails (by all modes of transportation) indicates that the Postal Service effort does not require an additional expenditure of resources by the Department of Transportation.

The second exception recognizes both the impracticality and the public policy constraints of one Federal agency asserting sanctions against a sister agency. In all other aspects, the HMTA would apply to Federal agencies and their instrumentalities. Furthermore, it should be noted that an employee of a Federal agency would be subject to all provisions of the HMTA to the same extent the employee's agency would be subject. Consequently, in a commercial hazardous materials shipment for the Federal government, a Federal employee could be subject to sanctions when his or her actions with respect to that shipment, take he or she outside the scope of Federal employment.

Section 2: This amendment deletes the requirement that applications for renewal of exemptions be published in the Federal Register. The requirement under the current section is extremely burdensome on the Department's Materials Transportation Bureau (MTB), both from the standpoint of time and money. Neither cost is justified in light of any benefit to be gained by the regulated public.

Between January 1, 1977 and July 1, 1982, the MTB submitted 3,580 applications for exemption renewal to the Federal Register for publication in accordance with Title 49, Code of Federal Regulations Part 107. However, for that five and one-half period and in response to those 3,580 applications, a total of only 20 comments were received—and none of those resulted in denial of a renewal.

From the programmatic standpoint, information and analyses submitted by commenters opposed to the renewal would have to be at least as persuasive as the information and analyses upon which the grant of exemption was based. As noted, this has not occured once in the last five and one-half years. Consequently, continuing this requirement is not justified based upon actual experience.

Section 3: This section would amend subsection 108(b) of the HMTA to make it a matter of Secretarial discretion in determining the kinds of radioactive materials which may be moved on passenger-carrying aircraft rather than the current scheme which gives no discretion to the Secretary and merely prohibits the carriage of materials having (1) an estimated specific gravity of 0.002 microcuries, and (2) essentially uniform radiation distribution. This will permit certain products containing minor radioactive components to be moved on passenger-carrying aircraft without the administrative burden of reissuing exemptions biannually, which is the current practice.

Section 4: The proposed amendment to subsection 109(d)(2) will promote more efficient use of private sector capabilities in response to emergencies. Currently, paragraph 109(d)(2) mandates that the Secretary establish and maintain a central reporting system and data center, even though private industry already maintains and operates a respository for information on chemicals and chemically related products that can be rapidly utilized by the Chemical Emergency Transportation Center (CHEMTREC) communicator and passed to the caller requesting assistance. In order to make most effective use of this capability, the Department and the Chemical Manufacturers Association, which sponsors CHEMTREC, entered into an agreement on March 13, 1980. This agreement provides that the National Response Center, which is maintained and operated by the Coast Guard, and CHEMTREC will cooperate in collectively providing the system and data center required by paragraph 109(d)(2).

The proposed amendment clarifies that this joint effort by the Department and private industry enables the Department to fulfill its mandate under paragraph 109(d)(2) without duplicating the effective efforts of CHEMTREC.

It must be noted however, that in making it possible for the DOT to utilize the capability of private sector services, there is no intention to lessen in any way the responsibility on regulated persons to report incidents involving hazardous materials, hazardous wastes, or hazardous substances in accordance with applicable regulations.

Section 5: This amendment would change the due date for the annual report on administration of the HMTA from May 1 to June 15 and eliminate the requirement that all exemptions in effect during the preceding calendar year be included in the report. Such a listing can be obtained from the Department by request at any time.

Section 6: As a conforming change to the exception for the Postal Service under the definition of "person" in the first section of the bill, Section 6 would amend the HMTA's provision on the applicability of other Federal laws (49 U.S.C. § 1811(c)) to state that the provisions of the Act will not apply to any matter covered by Federal postal laws or regulations. As mentioned in the analysis of Section 1, Federal postal laws that would be left unaffected by this legislation are codified in titles 18, 39, and 49. Rulemaking authority concerning the mailing or mail transportation of hazardous materials has been vested in the Postal Service under provisions of each title (18 U.S.C. § 1716(b); 39 U.S.C. §401(2) and § 5401(b); 49 U.S.C. § 1375(a)). While this amendment would confirm that preexisting Federal postal authority would not be changed, the amendment is stated so as to preclude any exemption from being inferred for any "person" shipping or transporting goods in interstate commerce, who only incidentally happens to be a postal employee or customer, and who is not actually subject to Federal postal laws or regulations in respect to such shipment or transportation.

Section 7: The proposed bill authorizes an appropriation to the Department of Transportation for fiscal year 1985 to fund activities related to the transportation of hazardous materials. The Department will continue the efforts of the Materials Transportation Bureau (MTB) to emphasize assistance in the development of state enforcement programs, training of enforcement personnel, and emergency response programs. MTB will continue its State Hazardous Materials Enforcement Development Program which provides technical and financial support through contractual agreements to states that have enacted legislation providing for state adoption of the Federal regulations.

The Department will also maintain delivery of technical information necessary to plan for and respond to emergencies involving hazardous materials. This includes the MTB's Emergency Response Guidebook (ERG), designed to provide the information necessary to identify hazardous materials and to determine safety measures to be taken in the event of an accidental release. The ERG will be revised and redistributed to firemen, police, and other emergency services personnel.

SUMMARY OF LIQUID PIPELINE ACCIDENTS AND CASUALTIES FROM 1972 TO 1983

	Failures	Fatalities	Injuries	Total commodity loss (bbl)
Report year:				
1972	302	1	16	344,350
1973	273	7	10	377,672
1974	256	10	6	292,001
1975	254	7	17	318,278
1976	212	5	4	249,690
1977	237	3	15	224,794
1978	256	3	10	280,794
1979	251	4	13	548,669
1980	219	3	12	289,445
1981	239	5	32	214,384
1982	200	1	6	221,411
1983	161	6	9	384,670

SUMMARY OF GAS PIPELINE ACCIDENTS AND CASUALTIES REPORTED FROM 1972–83 AS REQUIRED BY 49 CFR PART 191

Report year	Distribution			Transmission and gathering			Total		
	Failures	Fatalities	Injuries	Failures	Fatalities	Injuries	Failures	Fatalities	Injuries
1972	884	28	294	409	6	36	1,293	34	330
1973	893	33	333	471	2	19	1,364	35	352
1974	1,017	20	314	460	4	20	1,477	24	334
1975	979	8	220	394	6	17	1,373	14	237
1976	1,036	53	319	543	10	47	1,579	63	366
1977	1,530	29	420	466	7	30	1,996	36	450
1978	1,555	20	320	533	11	86	2,088	31	406
1979	1,520	33	313	450	12	93	1,970	45	406
1980	1,467	9	269	529	2	41	1,996	11	310
1981	1,128	10	73	495	6	6	1,623	16	79
1982	1,191	20	225	520	11	41	1,711	31	266
1983	1,127	10	220	453	2	25	1,580	12	245

SAFETY STATISTICS BY MODE

Mode	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	Total
Incidents by mode and reporting year:												
Air	49	157	152	90	130	231	284	233	160	97	66	1,649
Highway	5,467	7,612	9,891	10,772	14,250	16,548	15,978	14,484	7,704	5,647	4,829	113,182
Railway	409	616	676	982	1,500	1,191	1,215	1,327	1,131	831	851	10,729
Water	12	26	32	13	50	47	34	42	7	9	13	285
Freight forwarder	0	2	6	11	20	5	2	1	3	6	1	27
Other	65	15	12	21	0	0	11	28	58	3	1	214
Total	6,002	8,428	10,769	11,889	15,950	18,022	17,524	16,115	9,063	6,593	5,761	126,086
Deaths by mode and reporting year:												
Air	0	4	0	0	0	0	0	0	0	0	0	4
Highway	18	18	27	16	31	20	18	17	27	12	8	212
Railway	3	10	0	2	1	26	0	2	0	0	0	44
Water	0	0	0	0	0	0	0	0	0	0	0	0
Freight forwarder	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Total	21	32	27	18	32	46	18	19	27	12	8	260
Injuries by mode and reporting year:												
Air	6	5	4	4	9	43	13	8	7	0	0	99
Highway	335	281	487	617	507	594	697	481	397	93	122	4,611
Railway	152	596	96	198	233	482	228	129	221	36	69	2,440
Water	3	17	2	1	0	10	1	1	0	1	0	36
Freight forwarder	0	4	15	0	0	1	0	1	0	0	0	21
Other	13	0	51	0	0	0	2	2	18	0	0	86
Total	509	903	655	820	749	1,130	941	622	643	130	191	7,293
Damages by mode and reporting year (in thousands of dollars):												
Air	5,104	4,511,708	9,159	20,512	28,686	6,834	30,312	12,486	6,660	28,002	51,875	4,711,337
Highway	4,317,978	4,774,156	5,602,616	5,674,565	8,628,651	11,259,906	8,925,269	7,323,628	12,673,481	11,409,130	9,052,062	89,641,442
Railway	3,021,685	11,965,143	1,481,995	2,294,633	7,815,243	6,848,364	5,781,500	2,834,030	2,652,827	4,083,195	2,590,747	51,369,362
Water	8,009	20,117	6,331	5,270	18,258	17,912	30,364	507,427	53,045	30,000	80,088	776,821
Freight forwarder	0	0	3,345	405	351	160	0	100	6,500	35	300	11,196
Other	14,439	13,035	182	3,788	9,700	0	5,100	29,366	69,108	200	16,500	161,418
Total	7,367,215	21,284,159	7,103,628	7,999,173	16,500,889	18,133,176	14,772,545	10,707,037	15,461,621	15,550,561	11,791,572	146,671,576

Senator **Danforth**. OK, Cindy. Thank you very much. It is good to have you back.

Now we have four panels, and for each of these panels you are going to be timed. I would appreciate it if you could stick within the time limitations that have been given you. You do not even have to ask permission for your full statement to be put in the record. Don't use up any of your time asking permission that your statement be included in the record, because they will be included automatically.

The first panel is state and local officials: Judith Espinosa, secretary of transportation of New Mexico; Darrell McKown, chief of gas pipeline safety, West Virginia Public Service Commission; George Ruberg, office of the mayor, New Orleans; and Thomas White, council member, Greenbelt, Md., and chairman of the Energy, Environment, and Natural Resources Committee, National League of Cities.

Secretary Espinosa, would you like to proceed?

STATEMENTS OF JUDITH ESPINOSA, SECRETARY OF TRANSPORTATION, STATE OF NEW MEXICO; DARRELL McKOWN, CHIEF OF GAS PIPELINE SAFETY, WEST VIRGINIA PUBLIC SERVICE COMMISSION, REPRESENTING THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY JILL L. ROWE, ASSISTANT DIRECTOR OF CONGRESSIONAL RELATIONS; GEORGE RUBERG, ENVIRONMENTAL SPECIALIST, ENVIRONMENTAL AFFAIRS UNIT, OFFICE OF THE MAYOR, NEW ORLEANS, LA.; AND THOMAS X. WHITE, COUNCIL MEMBER, GREENBELT, MD., CHAIRMAN, ENERGY, ENVIRONMENT, AND NATURAL RESOURCES COMMITTEE, NATIONAL LEAGUE OF CITIES

Ms. **Espinosa**. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Judith Espinosa, the secretary of the New Mexico Transportation Department and also chair, the New Mexico Emergency Management Task Force which was created pursuant to chapter 80, laws of New Mexico 1983, entitled "The Emergency Management Act."

I would like to thank the committee for providing the State with the opportunity to testify before the committee on this issue, which in the recent past has received much attention in the State of New Mexico. I would also like to thank you, Mr. Chairman, because all too often New Mexico is certainly considered to be one of the States under the jurisdiction of the country of Mexico, and not within these United States.

We would like to say, Mr. Chairman, that as far as New Mexico is concerned, we have seen a significant amount of State, and citizen, and constituent interest in the transportation of hazardous materials within the State over the last decade; in particular, we have seen an acute interest due to the waste-isolation pilot project which will be a depository for low-level nuclear waste which is within the southeast part of the State. Due to this, we have increased pressure by the citizens of the State of New Mexico to see what the Department of Transportation within the State as well as other State agencies will be doing for the safe transport of hazardous materials, including nuclear materials.

To this end, the State legislature last year enacted an Emergency Management Act which was to respond and to deal with preventative measures as well as response and safety measures for the transportation and also emergency response due to accidents involving hazardous materials.

We have seen in a survey conducted through our ports of entry in this State in September and October of last year that at least 35 percent of the hazardous materials are generated within our own State. But all in all, most of the traffic comes through the highways and interstates.

We have had six derailments this year alone since January 1984, railroad derailments, and of those there were three involvements with hazardous materials. We thank our lucky stars that that has not created an emergency or a response problem for us, but it could in time happen, and we are holding our breath that we have our training and enforcement and prevention measures before that occurs.

One of major roles in the Emergency Management Act and within our task force is to work cooperatively with other State agencies and with Federal agencies developing our emergency response to accidents of hazardous materials. The volume of commercial traffic has increased steadily into Mexico since 1975, and we would assume that we would have more and more hazardous materials transported within our State and through our State as well.

Assuming this, it is critical that we minimize the need for our response and minimize the need for responding to accidents by planning and prevention measures. We would hope that we can get cooperative efforts from the Federal Government in this regard.

I might say that, just to delineate and to emphasize one area that we have relative to enforcement in cooperative efforts within the State and the Federal Highway Administration, we have only one Federal Highway Administration Bureau of Motor Carrier safety inspector to cover the entire State.

We do not feel that this is sufficient. We ourselves have 12 enforcement agencies who are State personnel who inspect the highways within the State. And we would hope that since new efforts, as Ms. Douglass stated, are toward safety and enforcement and training of State personnel, that we can increase the manpower within the State of New Mexico at the Federal level so that we can enforce and have more cooperative efforts.

We want to be as a State actively involved in planning and prevention at the Federal level as well as the State level. We do feel that there must be some State discretion relative to planning and relative to enforcement and relative to regulatory responses. We would hope that we would obtain that type of cooperation from the Federal Government.

May I add that one of the things we would like to delineate is, of course, New Mexico has a low population. However, we have a large mass of terrain. What is good for New Mexico is not necessarily good for New York, and what is good for New York is not necessarily good for New Mexico. We are mostly involved in different types of responses than those more populated areas.

Therefore, we would hope that the Federal Government, as well as DOT, would hope to respond to the States' individual interests as well as uniformity throughout the 50 States.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JUDITH M. ESPINOSA, SECRETARY, NEW MEXICO TRANSPORTATION DEPARTMENT

Mr. Chairman, and members of the Committee, I am Judith Espinosa, Secretary of the New Mexico Transportation Department. I also chair the New Mexico Emergency Management Task Force created pursuant to Chapter 80, New Mexico Laws 1983, Emergency Management Act. The Task Force has developed a New Mexico Hazardous Materials Emergency Response Plan in order to initiate and implement comprehensive procedures which can be applied statewide by all persons who may be involved in responding to a hazardous materials incident. Thank you for providing the State with the opportunity to testify before the Committee on this issue which has in the recent past received prominence as a public safety issue.

INTRODUCTION

If New Mexicans reflect attitudes of those citizens in other states there is heigthened awareness of and significant concern about our nation's ability to safety transport hazardous materials.

An increase in surface transportation through states and local communities of necessity exposes a larger portion of the population to the risks of accidents involving these materials.

If we are to restore and maintain the public's confidence in our ability to clarify and control the risks posed by accidental releases of hazardous materials, we must develop and support comprehensive policies that improve our nations hazardous materials transportation system.

Strengthened state and local government participation in the formulation of hazardous materials transportation policy is vital.

BACKGROUND

New Mexico has 900 miles of interstate highways and 3,280 miles of Federal Aide Primary highways in our state. Much of the coast to coast commercial travel goes across our highways and we are considered a bridge state. The two major interstates (I-40 and I-25) intersect at the center of one of the major urban areas—Albuquerque. Heavy commercial vehicles traveled nearly 788 million miles through the major road systems this past year. The New Mexico Department of Transportation conducted a thirty-two day survey of motor carriers and other vehicles passing through New Mexico during the months of August and September, 1983. Data was collected by port-of-entry personnel and included origin and destination of shipments, and type and quantity of hazardous materials carried. Types of hazardous materials transported within and through the State were tabulated. Flammable materials (flammable liquids, flammable gas, and gasoline) were found to be the most common hazardous materials transported with approximately two-thirds of the placarded vehicles surveyed carrying flammables. A more detailed summary of the findings are appended for the record to my testimony.

Major industries in New Mexico include oil/gas production, uranium mining, and agriculture, thus it is estimated we originate the transportation of about thirty-five percent of the hazardous materials within our own state. Additionally, New Mexico has several military/Department of Energy installations and will become the depository of low level nuclear waste at the Waste Isolation Pilot Project site (WIPP) in southeastern New Mexico. Although less than one percent of hazardous materials transported through or within the State are radioactive materials this traffic will increase with operation of WIPP in 1986.

In establishing the Emergency Management Act of 1983, the New Mexico State Legislature found: "the use of hazardous materials including radioactive materials, and the transportation of such materials through or within New Mexico occurs on a daily basis, and, no matter how safety—conscious facilities, users, shippers, or carriers are, accidents may occur . . . ."—(New Mexico Laws 1983, Chapter 80)

When New Mexico developed its Hazardous Materials Emergency Response and Management Plan (one of the first in the nation to be mandated by state law) it took a vital step forward in protecting the safety of its citizens.

However, transportation of hazardous materials is a multifaceted issue with many concerns that must be addressed before a comprehensive transportation system can be formed, one that meets the needs of the states, local jurisdictions, and the nation.

There is no doubt that a concensus exists as to what the major issues are—protecting the health and safety of people and their environment within a framework that does not unnecessarily impede the flow of commerce and national defense throughout our own state and the country.

New Mexico has addressed these critical issues within its Hazardous Materials Emergency Response and Management Plan. Because hazardous materials must of necessity continue to be transported it is essential to be prepared to respond to incidents involving hazardous materials and to develop an emergency plan that best utilizes all available resources. The three purposes of the New Mexico Emergency Management Act is as follows:

(1) To provide that adequate hazardous materials emergency management capability exists in the state to protect the health and safety of New Mexico citizens and the environment;

(2) To delineate those state agencies that are responsible for responding to a hazardous materials accident and providing for the control and management of such an accident, and to provide for the cooperation of other state agencies and local governments in emergency management; and

(3) To provide for the formulation of a comprehensive hazardous materials emergency management plan which will be distributed statewide and which *will be complied with by all persons who may be involved* in responding to a hazardous materials accident (emphasis added). In order to accomplish these goals, the Act established a Task Force to formulate a response plan, specifically designated the responsible state agencies to be involved in emergency response, and defined the event or circumstances which would trigger their involvement.

PLANNING AND PREVENTION

Assuming expanded traffic and routing of hazardous materials within interstate commerce, it is critical to minimize the need for actual government response at any level to incidents involving hazardous materials transportation emergencies. The keys are planning and prevention measures.

The volume of commercial motor vehicle travel has increased steadily in New Mexico since 1975. The total mileage of heavy commercial vehicles rose from 664 million miles in 1975 to 1,017 million in 1981. In comparison, heavy truck accidents decreased from 1,889 in 1979 to 1,667 in 1981. All pertinent data indicates that the heavy truck problems has leveled off on a statewide basis.

Analysis of heavy truck fatal and injury accidents in New Mexico reveals, as expected, that the majority of these accidents occur on Interstate highways (50.8%) as compared to 37% on federal aid primary, 7% on federal aid secondary and less than 6% on all other roadways. When compared to the percentage of truck miles on the road system, 49% on Interstate, 30% on primary, 5% on secondary and 16% on all other roads, the accident distribution is about what one would expect.

The State of New Mexico has been designated to chair the Railroad Safety Task Force of AASHTO's Standing Committee on Railroads. As such, it will work closely with all states in all areas of railroad safety. This includes grade crossing safety programs such as Operation Lifesaver, State Rail Inspection Programs and the transport of hazardous materials, which includes radioactive waste.

The Department of Energy's Waste Isolation Pilot Plant project for radioactive waste directly concerns multiple facets of state government and is continuously monitored by appropriate state agencies. Rail movements of spent nuclear fuel are anticipated to travel through at least fourteen of New Mexico's larger communities after commencement of the project.

In 1983 approximately 5 percent of the 79 rail accidents occuring in New Mexico involved hazardous materials. This compares with 7 percent of the same type of accidents for 1982.

Thus far in 1984, the state has recorded six rail accidents, three of which have involved hazardous materials, although fortunately there were no releases.

The possible release of combustibles, gases, poisons and radioactive materials directly affects the Transportation Department. Our involvement with the American Association of Railroads, AASHTO and a close working relationship with the major rail companies and the Federal Railroad Administration will, hopefully, control a possibly disasterous situation in New Mexico and throughout the country.

In New Mexico as well as in other states the responsibility between the state and local government for safe transport of hazardous materials is fragmented and varies between localities. The lack of clearly designated lead agency roles has thwarted the efforts of state planning, enforcement, regulatory compliance, training, and incidence response. Such obvious absence of coordinated activities has caused public sensitivity to hazardous materials transport.

To this end the New Mexico Legislature enacted the Emergency Management Act of 1983 (Chapter 80, Laws 1983) mandating several state agencies with varying responsibilities relative to hazardous materials to coordinate their efforts toward emergency response, incident management, personnel training and enforcement of regulations. After the first six months of its enactment state agencies dedicated time and efforts toward creating a statewide plan for hazardous materials emergency response and management. The plan, though simply written, reference an extensive procedural manual which delineates (1) responsibility for emergency management functions; (2) notification procedures for initial accident assessment; (3) accident assessment procedures for first responder communications and state agency coordination; (4) protective actions and exposure control; (5) public information and evacuation procedures; and (6) post accident cleanup. Cooperative agreements will be entered into with local governments and bordering states. Agreement negotiation will be continuing activity and each agreement will be tailored around the capabilities of the parties. All planning activities have occurred with industry involvement.

New Mexico's continuing efforts to safety secure transport of hazardous materials within and through its boundaries will emphasize personnel training within state and local government agencies involved in incidence response. Training efforts will emphasize the state emergency response and management plan as well as identify enforcement criteria necessary for prevention measures.

The approach taken in New Mexico mandating cooperative efforts between state agencies and local governments has proven most effective in our planning toward safer hazardous materials transport. We would encourage other states to take a similar approach in order to eliminate fragmentation of responsibility and lack of clearly defined roles.

ENFORCEMENT AND TRAINING

Currently New Mexico has only one Federal Highway Administration Bureau of Motor Carrier Safety inspector. He is diligent in carrying out the Bureau of Motor Carrier safety inspection program for heavy commercial carriers, but he is one person. It is impossible for him to do the job alone. Even with the committed support of state enforcement personnel, our safety enforcement program is limited in its effectiveness.

We believe that the Department of Transportation's Secretary Dole's announced five-year Motor Carrier Safety Assistance Program was, in her words, an opportunity "for the states and Federal government to work together to achieve our mutual goals."

According to the funding criteria, states must agree to adopt the Federal Motor Carrier Safety and relevant Hazardous Materials Regulations, or compatible state regulations.

The program is designed to fund programs to develop and implement safety inspection programs for heavy commercial vehicles. Of the forty states that have applied for funding, twenty-four have requested developmental rather than implementation grants.

This is an indication that many states are not unlike New Mexico in that they are interested in enhancing their current safety programs.

However, time and additional resources are needed to analyze what each state must do to be compatible with federal standards and the feasibility for doing it must be based upon the unique character of each state's ability and authority to enforce motor carrier safety rules.

The nature of the Motor Carrier Safety Assistance Program was to allow states to cautiously and systematically move forward a more consistent state/federal safety program that recognizes the importance of safety as a deterrent to possible catastrophic incidents involving hazardous materials transportation.

We could caution against passage of legislation that would short-cut this systematic movement toward a cooperative integrated program handled by the states and federal Department of Transportation and would instead substitute Federal preemption and imposition of standards so broad they do not fit well the different situations that exist in the various areas of the country.

An area of great importance in the implementation of the programs related to reducing the risk involved in the movement of hazardous materials is the training of the field personnel. Regardless of the plans and initiatives, the success of any program will depend on the extent and accuracy of enforcement activities. Since knowledge of hazardous materials and their handling is not widely held by enforcement officers, it will be necessary to establish training facilities and produce training materials; and provide the funding to make these educational tools available. The federal government should take a lead role in the establishment of these facilities and funding of the expenses incurred by the enforcement agencies in pursuit of this education.

RESEARCH

Expanded research and cooperative planning between states and the federal Department of Transportation is needed to include: Risk assessment; risk reduction; intermodal or alternative modes of transportation; the effects of accidental release of hazardous materials; routing; design of containers and vehicles used to transport hazardous materials; who is transporting what and what routes are being used, and is it in the public interest to ever move it, jurisdictional disputes/alliances, training, and lastly, and most importantly sufficient and sustained funding for now and the future.

At the present the information necessary for planning in this area is either not available or is not assembled in a fashion to be useful. In New Mexico work has begun on a system to accumulate the kind of information necessary to responsibly perform risk assessment and evaluate alternative actions that can be taken to reduce the risk. If states and the federal government each undertake to establish this information base separately, it will severely limit its usefulness when applied to interstate movement (which represents a majority of the movement) and is expensive due to the duplicative efforts of states and the federal government. It is recommended that a program be established to provide grant monies to the states for the development of systems for the collection of information necessary for decision making in this area. The federal government should establish a mechanism for exchange of information among the states and cooperation in the implementation of programs to reduce or eliminate the potential risks in the transportation of hazardous materials.

While a great deal of scientific information is known about materials being transported, this information is not widely available in a convenient location to be used by states doing planning in this area. Often industry information provided in association with a single issue must be accepted and used, eventhough there may be additional considerations or information that could be of use in the deliberations. The federal government should take the lead in assuring that as information is developed it is indexed and made available to the decision makers in the states.

I wish to thank the Chairman and members of the committee for your invitation to testify before you today. I would commend you for your efforts in addressing what we in New Mexico believe to be a very significant problem area. You can depend on continued interest in our state and support for planning and implementation of programs to insure safe transportation of hazardous materials.

APPENDIX.—HIGHWAY MOVEMENT OF HAZARDOUS MATERIALS SURVEY RESULTS

(Taken From New Mexico Hazardous Materials Emergency Response Plan; Dated: December 1, 1983)

AIR

Hazardous materials air cargos consist mainly of radiopharmaceuticals or agricultural herbicides and pesticides. Radiopharmaceuticals are flown into Albuquerque where two radiopharmacies are located. Light aircraft carrying agricultural herbicides and pesticides can be found in any part of the state.

HIGHWAY

The amount of hazardous materials transport on New Mexico highways is not fully known or even knowable. Although many hazardous materials cargos are placarded and can be counted, others are not so easy to identify. These include vehicles carrying small quantity shipments and vehicles that do not pass through the ports of entry or internal ports.

To better understand the nature of hazardous materials transport by highway in New Mexico, the Emergency Management Task Force authorized a survey of vehicles passing through the 19 New Mexico ports of entry and internal ports. (See locations, Exhibit 4.) The Transportation Department carried out the survey between

August 15 and September 16, 1983, recording data on each placarded vehicle. For a variety of reasons, nonplacarded vehicles were not included. Data collected included the port locations, origin, and destination of shipments, and type and quantity of hazardous material carried. (See sample form, Exhibit 5.)

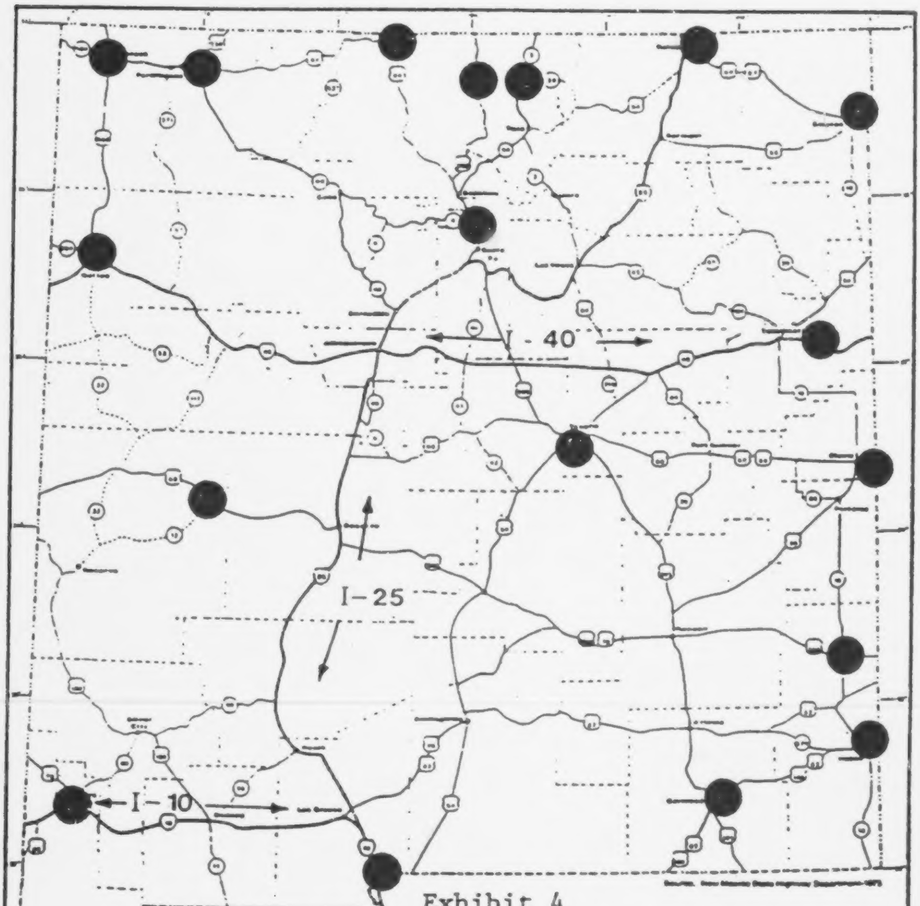


Exhibit 4
MAJOR NEW MEXICO HIGHWAYS AND PORTS OF ENTRY

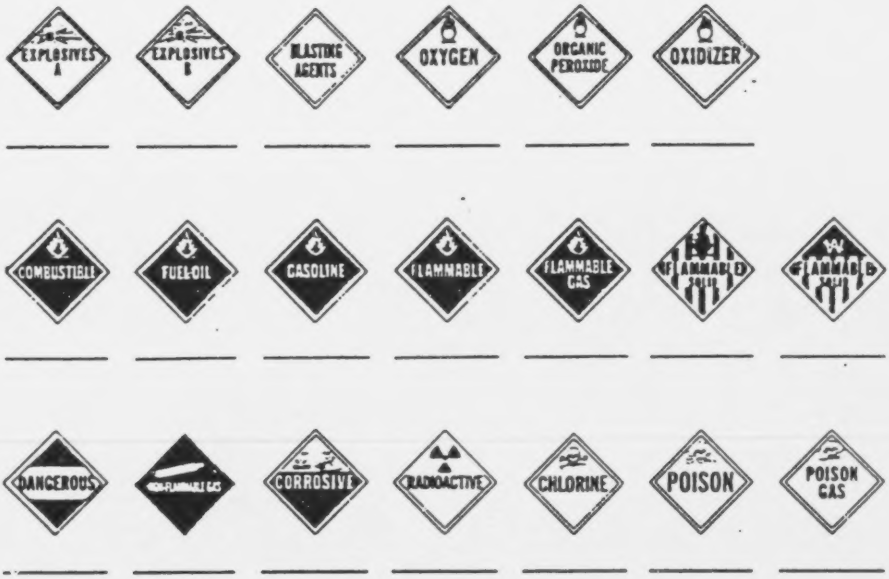
Key: Highway Functional Classification System

Function	Type
——— Interstate	○ Interstate
——— Major Arterial	▢ Federal Highway
——— Minor Arterial	○ State Highway
------------ Other	

Exhibit 5

HAZARDOUS MATERIALS SURVEY FORM

1. Port of entry location ____________________
2. Date ____________________ 3. Time of day __________ a.m. __________ p.m.
4. State of origin ____________________
5. Final destination ____________________
6. Highway routes ____________________
7. Mileage through state ____________________
8. Circle placard(s) visible on vehicle.



9. Write 4-digit hazard identification number(s) under the appropriate placard(s). If there is no 4-digit I.D. number, write "none".
10. Is load full ________ partially full ________ empty ________ ?
11. Is this a mixed load? Yes ________ No ________ .
12. What quantities of hazardous materials are being transported? Please refer to bill of lading.

____

____

____

13. Are shipping papers being carried in pouch in door on drivers side or readily accessible?
Yes ________ No ________

During the 32-day survey, 11,869 hazardous materials placarded vehicles were documented. The Gallup port of entry, which is the western port of Interstate 40, recorded the largest number of placarded vehicles, 26 percent of the total.

Heavy traffic of placarded vehicles also passed through Anthony near the Texas border on Interstate 10, Hobbs near the Texas border in the Permian Basin, and Santa Fe which is an internal port on a north/south route through the state. (See Exhibit 6.)

The types of hazardous materials transported in and through the state are shown in Exhibit 7. Common household and commercial products are not included since such shipments are usually two small to be placarded. Flammable materials (flammable liquids, flammable gas, and gasoline) are the most common-approximately two-thirds of the placarded vehicles surveyed carried flammables. Radioactive materials were only 0.5 percent of all hazardous materials but this traffic will increase with operation of the Waste Isolation Pilot Project (WIPP) in Eddy county in southeast New Mexico. Potential routes to WIPP are shown on the map in Exibit 8.

Most hazardous materials shipments surveyed have an origin or destination within the state. New Mexico was the originating state for 35 percent of the shipments and destination for 48 percent. (See Exhibit 9.) Texas, also an oil and gas producing state, closely follows New Mexico as an originating state.

EXHIBIT 6.—HAZARDOUS MATERIALS TRAFFIC DENSITY THROUGH PORTS OF ENTRY

Port of entry	Number of placarded vehicles	Percent of placarded vehicles surveyed
Gallup	3,046	26
Anthony	1,833	15
Hobbs	1,297	11
Santa Fe	1,166	10
Lordsburg	877	7
San Jon	737	6
Shiprock	708	6
Carlsbad	686	6
Vaughn	347	3
Nara Visa	336	3
Aztec	174	2
Texico	168	1
Raton	167	1
Clayton	167	1
Tatum	55	.5
Datil	55	.5
Tres Piedras	28	.2
Chama	15	.1
Questa	1	.01
Total	11,869	

EXHIBIT 7.—HAZARDOUS MATERIALS SHIPMENTS BY TYPE OF MATERIAL

Type of material	Number of placarded vehicles	Percent of placarded vehicles surveyed
Flammable liquids	4,011	34
Flammable gas	2,146	18
Gasoline	1,734	14
Combustible	1,079	9
Corrosives	944	8
Nonflammable gas	673	6
Dangerous	418	4
Explosives A	243	2
Oxidizer	129	1
None listed	107	.9
Explosives B	84	.7
Poison	80	.7
Radioactive	58	.5

EXHIBIT 7.—HAZARDOUS MATERIALS SHIPMENTS BY TYPE OF MATERIAL—Continued

Type of material	Number of placarded vehicles	Percent of placarded vehicles surveyed
Fuel oil	59	.5
Flammable solids	46	.3
Chlorine	17	.1
Oxygen	12	.1
Poison gas	12	.1
Organic peroxide	11	.09
Blasting agent	6	.06
Total	11,869	....

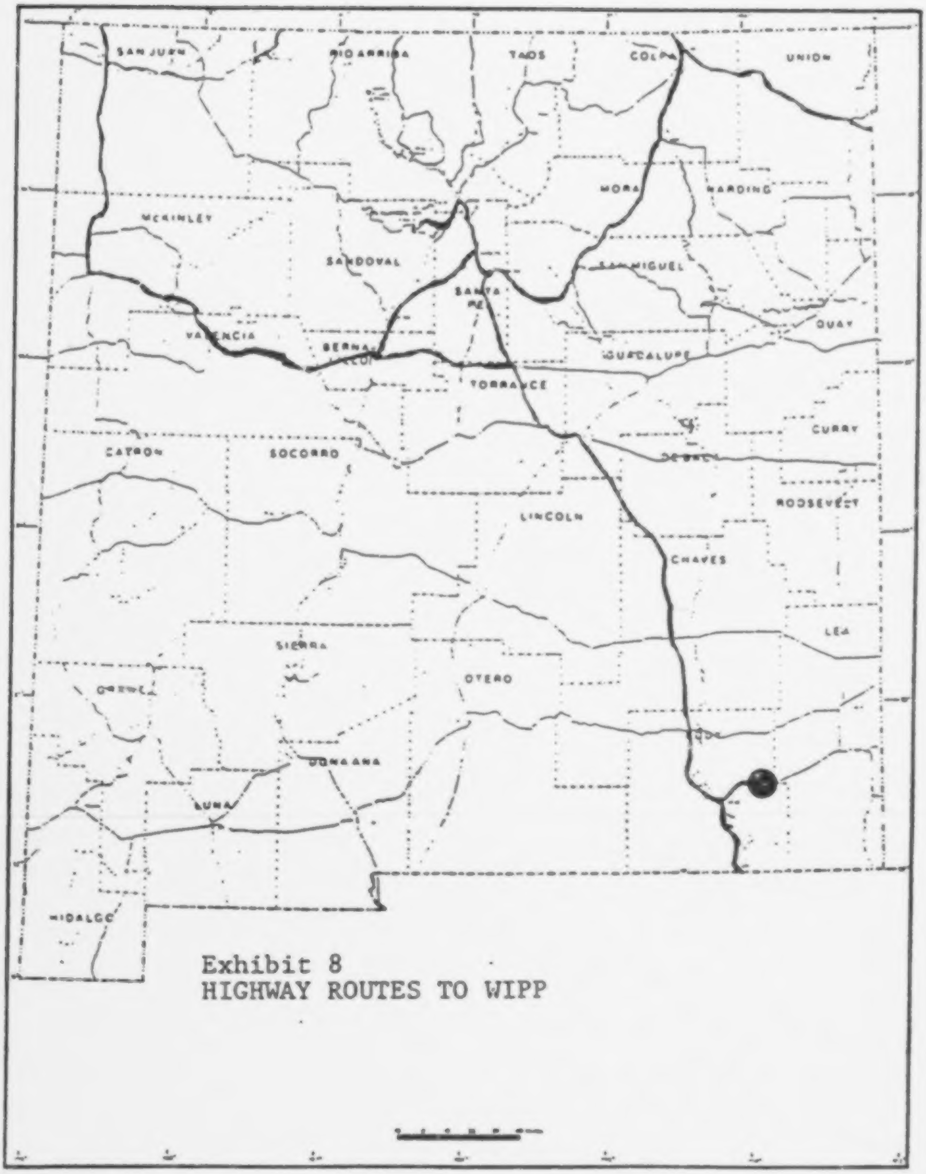


Exhibit 8
HIGHWAY ROUTES TO WIPP

EXHIBIT 9.—STATE OF ORIGIN AND DESTINATION OF HAZARDOUS MATERIAL SHIPMENTS

	Number of placarded vehicles	Percent of placarded vehicles surveyed
Originating State:		
New Mexico	4,211	35
Texas	3,983	34
Arizona	1,608	14
California	411	3
Colorado	305	2
Other States	1,351	12
Destination State:		
New Mexico	5,748	48
Texas	2,000	17
Arizona	1,896	16
California	1,078	9
Other States	1,147	10

Senator DANFORTH. Thank you.

Mr. McKown.

Mr. McKOWN. Mr. Chairman and members of the subcommittee, my name is Darrell McKown. I am chief of the Gas Pipeline Safety Division, with the State of West Virginia Public Service Commission.

I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as NARUC. With me today is Jill Rowe, NARUC's assistant director of congressional relations. Mr. Walter Hernandez, the chairman of the NARUC Subcommittee on Pipeline Safety, was originally scheduled to testify today, but he was unable to be here.

We greatly appreciate your invitation to address the subcommittee on the reauthorization of the Hazardous Materials Transportation Safety Act and the national gas and hazardous liquid pipeline safety grants-in-aid program.

Since many of our members are current or potential participants in these programs, we are vitally concerned with the future of the pipeline programs, and we are interested in implementing a similar grant-in-aid program for hazardous materials transportation safety.

The pipeline programs provide for the implementation of federally mandated standards to improve our Nation's pipeline safety. In order to achieve this essential public goal, the programs rely heavily upon a vigorous Federal-State partnership whereby the States voluntarily enforce the Federal safety regulations. As a result, the programs protect public safety and encourage the States to contribute their own funding and manpower to assist the Federal Government in fulfilling its various pipeline safety requirements and responsibilities.

Since its enactment in 1968, the natural gas pipeline safety grants-in-aid program has proven to be a model of Federal and State cooperation. Forty-seven States and the District of Columbia and Puerto Rico participate in the program. However, the appropriations for the program have fallen short of the 50-percent matching funds that the States need to insure a continued high level of State participation.

In 1983 the States' requests for grants totaled $5,742,140, and in 1984 the request was $6,242,934. Unfortunately, the appropriations for this program have remained at $3.5 million for both fiscal years 1983 and 1984.

Federal funds allocated to this program have been put into effective use, permitting many States to establish and improve State level pipeline safety activities, as well as to finance personnel training, salaries, and equipment expenses. However, the safety risks which this program is designed to minimize are substantial.

With 1,580 gas pipeline failures resulting in 12 fatalities, 245 injuries in 1983, there is obviously a great need for reauthorization and continued funding of the natural gas pipeline safety program. The NARUC is requesting that $6.2 million be appropriated for this program for the fiscal year of 1985.

The hazardous liquids pipeline safety program, another Federal-State partnership, is in its fourth year, and funds have never been made available. With 16 States having proper jurisdiction for program eligibility and 6 States in the process of procuring jurisdiction through legislation, it is obvious that the States are ready to implement the program.

Like the natural gas safety program, the hazardous program would assist the Federal Government in fulfilling its safety responsibilities. The NARUC continues to encourage the reauthorization and the initial funding of this program. We believe that given the opportunity, the hazardous liquids program could be equally as effective as the natural gas safety program.

However, without Federal support, the States are unlikely to pick up the program on their own. The NARUC is requesting $1 million in startup funding for the fiscal year of 1985.

Finally, I would like to address the controversial problem of hazardous materials transportation. We feel the best framework for preventing transportation accidents is to create a grant-in-aid program similar to the natural gas and hazardous liquids pipeline grants-in-aid programs.

The NARUC respectfully urges the subcommittee to encourage Federal-State cooperation in attaining a safer America in fiscal year 1985 by reauthorizing the natural gas and hazardous liquids pipeline safety grants-in-aid programs and creating a similar program for hazardous materials transportation.

Thank you very much for your attention.

[The statement follows:]

STATEMENT OF NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and distinguished members of the Subcommittee:

I. INTRODUCTION

My name is Walter Hernandez and I am Chief of the Division of Hazardous Liquid Pipeline Safety and Enforcement with the California State Fire Marshal's Office. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners (commonly referred to as NARUC). Accompanying me today from the NARUC are Paul Rodgers, General Counsel; Linda Kent, Director of Congressional Relations; and Jill L. Rowe, Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States and the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America. As part of that objective, many of the NARUC's member agencies are current or potential participants in the Natural Gas and Hazardous Liquid Pipeline Safety Programs and are interested in implementing a similar program for hazardous materials transportation safety.

We greatly appreciate your invitation to testify on these programs. As Chairman of the NARUC's Subcommittee on Pipeline Safety, I would like to begin by emphasizing the importance of the two pipeline safety programs which provide for the implementation of Federally-mandated standards to improve our Nation's pipeline safety. In order to achieve that essential public goal, the programs rely heavily upon a vigorous Federal-State partnership whereby the States voluntarily enforce the Federal safety regulations. Recognizing the valuable contribution that these programs make to pipeline safety, the NARUC is vitally concerned with the future of the Natural Gas and Hazardous Liquid Pipeline Safety Programs, which are administered through the Department of Transportation's [DOT's] Research and Special Program Administration [RSPA].

The appeal of these programs, in addition to their obvious vlaue inprotecting public safety, lies in the fact that they encourage the States to contribute their own funding and manpower to assist the Federal government in fulfilling its various pipeline safety responsibilities. Federal grants-in-aid are provided to participating States on a matching basis of up to 50 percent of the States' total program costs. As a result, these national safety programs can be carried out at only a fraction of the Federal funding level tht would otherwise be required.

Utilizing State resources to implement Federal safety standards reduces the need for a large Federal field staff. In addition, the Federal government gains the benefit of State expertise when enforcement responsibilities are carried out by officials best able to assess the unique requirements of a particular locality.

The overwhelming success of the natural gas pipeline program in reducing the number of accidents demonstrates the important contribution that such a program can made to Federal safety efforts. Believing in the immeasurble benefits derived from these Federal-State partnerships created for pipeline safety, the NARUC strongly supports the reauthorization of these programs and opposes any effort to reduce funding for them. In addition, we would like to see the cration of a hazardous materials safety program patterned after the pipeline safety program. We respectfully urge the Subcommittee to encourage Federal-State cooperation in attaining a safer America in fiscal year [FY] 1985 by approving the reauthorization of the RSPA's Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs, and to consider the implementation of a hazardous materials safety program.

II. NATURAL GAS PIPELINE SAFETY GRANTS-IN-AID PROGRAMS

Since its enactment in 1968, the Natural Gas Pipeline Safety Grants-In-Aid Program [1] has proved to be a model of Federal-State cooperation in its efficient implementation of gas pipeline safety standards. As administered through the RSPA, the pipeline safety program provides up to 50 percent in matching funds to assist participating State in enforcing gas pipeline safety regulations. The Federal-State partnership in this program has worked effectively, but funding in the past has been insufficient to provide the full 50 percent matching funds authorized by law.

In 1983, 47 States, the District of Columbia and Puerto Rico participated in this program and in 1984 the same States are again participating.[2] While the high level of State participation has remained the same, the funding needs have changed. In 1983 the States' requests for grants totaled $5,742,140 and in 1984 the request is $6,242,934. Unfortunately, the appropriations for this program have remained at $3.5 million for both FY 1983 and 1984.[3] For the safety program to continue to increase in effectiveness and efficiency, there must be full 50 percent matching funds.

Federal funds allocated to this program have been put to effective use, permitting many States to establish and perfect State-level pipeline safety activities, as well as to finance personnel training, salary and equipment expenses. The States further demonstrate their commitment to this program by contributing over 50 percent of the national safety inspection effort. However, the safety risks which this program is designed to minimize are substantial. Gas and hazardous liquid pipelines in the United States total approximately 1.7 million miles and transport more than half of

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[1] 49 U.S.C. 1671.

[2] See Appendix A for a list of participating States.

[3] See Appendix A.

the nation's energy supply. These pipelines carry large quantities of extremely volatile substances, often under high pressure, and expose large segments of the population to risks of potentially catastrophic proportions. In 1983, despite Federal-State inspection efforts, ther were 1,580 gas pipeline failures, resulting in 12 fatalities and 245 injuries. These figures illustrate the need to continue to fund the pipeline safety program at an adequate level.

The natural gas pipeline safety program is working and is an excellent example of the ability of the Federal and State governments to cooperate in protecting the public health and safety. The continued overwhelming State participation (all but three States) indicates the States' belief in the program's effectiveness. However, the grants have proven insufficient in the past to provide 50 percent matching funds. Funding support must be maintained at a level that reflects inflation and changes in technology. It is unrealistic to expect that the program can continue to operate at $3.5 million for another year.

III. HAZARDOUS LIQUID PIPELINE SAFETY GRANTS-IN-AID PROGRAM

The hazardous liquid pipeline safety program is another Federal-State partnership whereby Federal grants-in-aid are authorized to be provided to participating States for enforcing instrastate liquid pipeline safety. However, the program is in its fourth year and funds have never been appropriated. The success of the natural gas pipeline safety program is a strong indicator that the hazardous liquid pipeline safety program could be equally as beneficial if given an equal opportunity. The States need the reauthorization of this program so that they may continue their efforts to secure Federal funding. The States are ready and willing to make this program work once they have the proper authorization and appropriations.

Presently, 16 States have proper jurisdiction for program eligibility through legislation and 6 States are seeking legislation to provide them with jurisdiction.[4] If this safety program is to become a reality, funds must be appropriated; however, once again the budget request for FY 1985 does not include funding for the hazardous liquid pipeline safety program. Like the Natural Gas Pipeline Safety Program, the hazardous liquids program would assist the Federal government in fulfilling its safety responsibilities and at the same time it would reduce the Federal funding level that would otherwise be required.

The NARUC has continued to seek funding for this program. In 1983, the NARUC requested that $1 million in start-up funds be provided for the implementation of the hazardous liquid pipeline safety program; however, no funds were appropriated. Without funding the States are unlikely to pick up the program.

The DOT is presently in the process of proposing rules for instrastate hazardous liquids pipeline safety in addition to the existing regulations for interstate pipeline safety. However, without funding the States will be left with Federal regulations for the enforcement of inter- and intrastate safety measures and yet no money for implementing this enforcement. It is apparent that the States have an interest in this program and the regulations available to make it work. With the proper reauthorization and funding, the hazardous liquid pipeline safety program could play a vital role in pipeline safety.

IV. SUGGESTIONS FOR IMPROVING THE PROGRAMS

As has previously been stressed, there is a great public safety need for the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs. The first important step in fulfilling this public need is to obtain reauthorization of these programs; the next, to obtain sufficient funding; and finally, to put any funding to its most efficient use. In terms of greater efficiency, there is a need to improve the training program for State pipeline inspectors and to strengthen the DOT's Materials Tranportation Bureau's [MTB's] research effort.

The training program for the State pipeline inspectors is not adequate. The Transportation Safety Institute [TSI], administered by the DOT's MTB is the only place available to instruct Federal and State inspectors on how to enforce Federal regulations. TSI faces a very real threat of grossly insufficient funding in 1985 as best illustrated by the following table:

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[4] See Appendix B for a list of these States.

	Appropriations for TSI	Number of students	Amount for TSI program allowed per student
1981	$185,400	1,813	$102.26
1982	138,300	1,338	103.36
1983	197,400	1,906	103.57
1984	235,000	NA	NA
1985 [1]	73,000	NA	NA

[1] Fiscal year 1985 budget request.

Notes.—NA—Information not available.

The TSI training program lasts from three to five days. It is difficult to adequately train a student over a three to five day period with only $103. In 1984 the amount may cover the total needed to train each student. In 1985 the program may be in financial trouble as the number of student inspectors will probably continue to increase and the funding requested shows a dramatic drop.

If the hazardous liquid pipeline safety program is added to TSI's training, a $40,000 increase from the $235,000 in 1984 will be needed. If TSI starts training master meter operators it will need an additional $40,000. This latter type of training is greatly needed as there are approximately 80,000 master meter operators that may require specific instruction as to the requirements of the existing Federal regulations. Each new program requires more manpower at TSI and hazardous liquids and master meter operator are two phases that training should be including.

If Congress wants a higher level of safety for all citizens then some assurance has to be given to the States that the Pipeline Safety Programs will receive adequate funding to retain the qualified personnel currently employed, while providing the necessary training to maintain the qualifications of these same employees.

With insufficient funding continuing to be a problem each year, it is important that research efforts be expanded on the most cost-efficient basis for promoting pipeline safety. The NARUC suggests that the MTB should emphasize research on pipeline retesting.

Specifically, research should be directed toward the development of an electronic device that can travel through the pipeline and detect any deficiencies in the wall of the pipeline (commonly referred to as a PIG). Such a device is a piece of metal that fits snugly into the pipeline and scrapes the pipeline's wall as it moves through the pipeline. If the PIG is run with different electrical connectors, it can pick up problems such as a decrease in the wall thickness of the pipeline in a certain area. It can then immediately give the operator a print out of the problem and where it exists in the pipeline. Once such a device is developed, it would be the safest and cheapest method for pipeline retesting.

These suggestions for improving the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs are offered to illustrate that the NARUC's State member agencies are committed to the continuing viability of these programs and consequently are studying ways to strengthen them. However, any suggestions are words without meaning if the programs do not exist through which to carry out the ideas for improved pipeline safety. The NARUC urges the members of the Subcommittee to continue to support these two Federal-State partnerships by granting their reauthorization.

V. HAZARDOUS MATERIALS TRANSPORTATION GRANTS-IN-AID

I would next like to address the controversial problem of hazardous materials transportation. We feel that the best framework for preventing transportation accidents is to create a grants-in-aid program similar to the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs.

In 1981, in a survey conducted by the NARUC, 21 of 30 responding State agencies supported the implementation of such a program. With over 250,000 hazardous materials shipments occurring every day on our Nation's highways, such a plan is long overdue.

Federal regulation of hazardous materials transportation, pursuant to the Hazardous Materials Transportation Act of 1975,[5] is under the jurisdiction of the DOT. However, State and local agencies also exercise regulatory authority over this type of transport within their respective jurisdictions. Unfortunately, there has been a lack of cooperation between Federal, State and local authorities in this area due, in part, to the lack of grants-in-aid program. The original Act contains no provisions to permit willing States to monitor and enforce Federal hazardous materials regulations.

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[5] 49 U.S.C. Sec. 1801.

While Federal, State and local governmental cooperation is important, we do not believe that State and local safety efforts should be preempted or in any way undermined by Federal regulations. State and local officials are in a far better position to address the safety programs unique to their jurisdictions than is the Federal DOT. The regulatory scheme we are proposing is a partnership whereby the Federal government promulgates minimum standards to be enforced by the States. However, State and local safety laws which are consistent with, are more stringent than or are in addition to Federal standards must be preserved if a true commitment to safety is to be realized.

With our strong belief in the States' legitimate authority to regulate matters within their boundaries, the NARUC opposes the language in section 1802(1)(B) of the Hazardous Materials Transportation Act, 49 U.S.C. 1801, which extends the definition of "commerce" to transportation which affects interstate commerce. We feel that such language unfairly impinges upon what is traditionally State authority. Interpreted literally, any transportation of hazardous materials could be defined as "affecting" commerce. Standards to ensure that no rule or regulation poses an "undue burden" on interstate commerce are well established in existing case law and provide an adequate test for any rules or regulations prescribed by a State regarding wholly interastate matters. We would strongly recommend that the Subcommittee amend section 1802 to omit its reference to commerce which "affects trade, traffic, commerce, or transportation." [6]

In addition, the time has come to amend the Act to establish a Federal/State hazardous materials safety program patterned after the pipeline safety program. We urge your consideration of such a proposal.[7]

V. CONCLUSION

Mr. Chairman, our testimony today has emphasized the important roles which the State can and should play in the implementation of national safety policy. The NARUC firmly believes that true Federal/State partnerships, whereby the States enforce Federal safety standards through the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Program and, if created, a Hazardous Materials Grants-In-Aid Program, will ensure the effectiveness of a comprehensive safety policy for the transportation of natural gas, hazardous liquids and hazardous materials.

Thank you for your attention.

APPENDIX A.—1984 PIPELINE SAFETY GRANTS

State	Request	Allocation	Percent of funding [1]
Alabama	$185,308	$101,408	27
Arizona	179,054	102,252	28
Arkansas	79,976	64,730	40
California	253,223	105,385	20
Colorado	72,171	59,272	41
Connecticut	60,000	50,706	42
Delaware	10,145	9,786	48
Florida	47,194	41,571	44
Georgia	99,896	76,091	38
Hawaii	12,500	12,053	48
Idaho	20,535	19,312	47
Illinois	173,570	101,188	29
Indiana	62,725	53,009	42
Iowa	72,575	59,604	41
Kansas	100,150	75,933	37
Kentucky	201,358	102,994	25
Louisiana	352,864	121,628	17

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[6] This amendment may be made by inserting a semicolon at the end of Clause (A) of section 1802(1) of the Hazardous Materials Transportation Act and deleting clause (B).

[7] A copy of the NARUC proposed legislation is contained in Appendix C.

APPENDIX A.—1984 PIPELINE SAFETY GRANTS—Continued

State	Request	Allocation	Percent of funding [1]
Maine	11,275	10,872	48
Maryland	32,273	29,581	45
Massachusetts	74,388	61,093	41
Michigan	101,273	75,091	37
Minnesota	71,687	58,875	41
Mississippi	113,528	82,417	36
Missouri	115,907	82,763	35
Montana	19,000	18,094	47
Nebraska	53,792	46,742	43
Nevada	32,692	29,965	45
New Hampshire	31,391	28,773	45
New Jersey	162,243	98,451	30
New Mexico	89,850	70,580	39
New York	886,674	305,626	17
North Carolina	100,674	75,484	37
North Dakota	13,855	13,360	48
Ohio	123,041	86,391	35
Oklahoma	96,412	73,437	38
Oregon	42,886	38.287	44
Pennsylvania	186,554	102,090	27
Rhode Island	66,459	55,373	41
Tennessee	159,094	98,436	30
Texas	1,008,332	347,560	17
Utah	43,920	39,210	44
Vermont	28,509	26,471	46
Virginia	101,038	75,757	37
Washington	69,466	57,879	41
West Virginia	125,100	86,346	34
Wisconsin	125,488	86,614	34
Wyoming	119,277	85,169	35
District of Columbia	37,055	33,523	45
Puerto Rica	16,557	15,768	47
Total	6,242,934	3,553,000	28

[1] The request represents 50 percent of the agency's estimated budget. The percent of funding is the percentage of the budget represented by the allocation.

APPENDIX B.—HAZARDOUS LIQUID PIPELINE SAFETY PROGRAM (SUMMARY)

States with jurisdiction 16:

Texas, California, Wyoming, Pennsylvania, Kansas, New Mexico, Montana, Ohio, North Dakota, Arkansas, Arizona, New York, Iowa, Nevada, Hawaii, and West Virginia.

States seeking jurisdiction (6):

Louisiana, Oklahoma, Mississippi, Alabama, Washington, and Wisconsin.

Remaining States do not have intrastate liquid pipelines.

APPENDIX C

A BILL To amend title 49 of the United States Code to permit participation by State agencies in the enforcement of the Hazardous Materials Transportation Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hazardous Materials Transportation Act Amendments of 19 ."

PURPOSE OF THE ACT

SEC. 2. The purpose of this Act is to amend the Hazardous Materials Transportation Act [49 U.S.C. sec. 1801-1812] to permit the several States to monitor and enforce Federal hazardous material transportation standards issued by the Secretary of Transportation.

Sec. 3. Title 49, United States Code is amended by adding thereto the following new section:

“Sec 1813. Investigative and surveillance activities by the States.

(a) A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order, or standard prescribed by the Secretary under this chapter if the safety practices applicable to the transportation of hazardous materials within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety practices applicable to the transportation of hazardous materials within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order, and standard, applicable to the transportation of hazardous materials established under this chapter as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 1814 of this chapter) to request injunctive relief for the violation of rules, regulations, orders, and standards prescribed by the Secretary under section 1804(a) of this chapter and recommend appropriate action as provided by section 1809 and 1810 of this chapter.

(b) Each annual certification shall include a report, in such form as the Secretary may provide, showing—

(1) all accidents or incidents reported during the preceding twelve months with regard to the transportation of hazardous materials involving personal injury requiring hospitalization, fatality, or property damage exceeding $750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident;

(2) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders, and standards prescribed by him under section 1804(a) of this chapter, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(3) such other information as the Secretary may require.

The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily complying with the investigative and surveillance activities prescribed by him with respect to such safety rules, regulations, orders, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification, in whole or in part, or take such other action as he deems appropriate to achieve adequate enforcement. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily complying with the investigative and surveillance activities prescribed by the Secretary with respect to such safety rules, regulations, orders, and standards

(c) With respect to the transportation of hazardous materials for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the investigative and surveillance activities prescribed by the Secretary as necessary to obtain compliance with any Federal safety rule, regulation, order, or standard applicable to any such transportation. An agreement entered into under this subsection, or any proivision thereof, may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to provide all or any part of the investigative and surveillance activities to which the agreement relates. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen day's after the date of publication.

(d) Upon application by any State agency which has submitted a certification under subsection (a) of this section, or entered into an agreement under subsection (c) of this section, the Secretary shall pay, out of funds appropriated pursuant to this subchapter or otherwise made available, up to 50 per centum of the cost of the personnel, equipment, and activities of such State agency reasonably required, during the ensuring fiscal year, to carry out a safety program under such certification or agreement. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program that the aggregate expenditures of funds of the State, exclusive of Federal grants, for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal year preceding October 1, 19 .

(e) The Secretary is authorized to conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this subchapter.

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for hazardous material transportation established under this chapter after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection."

SEC. 4. Title 49, United States Code is amended by adding thereto the following new section:

"SEC. 1814. Enforcing compliance with hazardous materials transportation safety rules, regulations, orders, and standards.

(a)(1) In any case in which the Secretary has failed to assess the civil penalty applicable under section 1809(a) of this chapter with respect to a violation of any hazardous material transportation safety rule, regulation, order, or standard issued under this chapter within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 1813 of this chapter, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

(b)(1) In any case in which the Secretary has not commenced an action for injunctive relief under section 1810 of this chapter with respect to a violation of any hazardous material transporation safety rule, regulation, order, or standard issued under this chapter within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 1813 of this chapter, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order or standard.

(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (A) no violation has occurred, or (B) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

(c) A State agency may not bring an action under this section in any United States district court located outside the boundaries of the State."

Senator DANFORTH. Thank you, sir.

Mr. Ruberg.

Mr. RUBERG. Mr. Chairman, I am George Ruberg, an environmental specialist in the environmental affairs unit of the mayor's office in New Orleans. I am testifying on behalf of Mayor Ernest N. Morial for the city of New Orleans, and also on behalf of the National Association of Local Governments on Hazardous Waste, of which the city is a member.

The National Association of Local Governments on Hazardous Waste is an organization comprised of a cross-section of large and small city and county local entities. It was established in response to the pressing need for local governments to take a strong and active role in hazardous waste policy issues.

We appreciate the opportunity to testify before this subcommittee.

Many cities throughout the Nation, including New Orleans, have had to make hazardous-materials transportation, hazardous-waste disposal, and emergency response a high priority. New Orleans is no exception.

For the citizens of the State of Louisiana it is not a philosophical issue. In a recent 5-year period, for railroad accidents alone involving hazardous materials, 15,000 people have had to be evacuated from their homes.

During the past 2½ years the city, through the mayor's environmental affairs unit and an advisory council on hazardous materials, has increased efforts to prevent and improve our preparedness to respond to hazardous materials transportation incidents. We have identified over 100 industrial facilities, 200 cargo-handling facilities, 83 rail-waterway interface points, and scores of truck terminals dotting the Mississippi River in southeast Louisiana.

By volume of cargo, New Orleans is the largest port in the country. Obviously, New Orleans is a major through route and transfer point for large quantities of hazardous materials.

I am here today to express our support for maintaining a strong role for local communities in the Federal-State-local partnership which addresses hazardous materials regulations and accident prevention. We are opposed to any expansion of the already broad preemptive language of the Hazardous Materials Transportation Act, and we specifically oppose the preemption provisions of the proposed legislation from the Hazardous Materials Transportation Coalition.

It is local fire departments and police departments which are the primary and sometimes the only responders to hazardous materials accidents. In New Orleans, in one recent 17-month period, our fire department responded to 73 incidents involving 59 different chemicals.

It is also the city's agencies which have the greatest enforcement presence in the community. We must be able to set higher standards of safety when it is appropriate, whether this is in the area of accident reporting, restricted access routes, advance notification, or other areas.

It is a misconception to believe that local communities want to establish frivolous detours and roadblocks to industry. In New Orleans, much of our economy is based on handling cargo.

We believe, for instance, that local advisory councils can be appointed with industrial representation to assist in the review and development of local legislation based on knowledge rather than on emotion. For example, our local advisory council has worked for nearly 2 years assisting us in data analysis, response planning, and regulatory review. And the mayor's environmental affairs unit is only now preparing to submit carefully reviewed proposed ordinances to the city council.

It is also a misconception to believe that local communities cannot reach workable, cooperative agreements with industry. In 1980, the city successfully negotiated an agreement with railroad companies that they would not store tank cars carrying hazardous materials in a railyard in the French Quarter of New Orleans for more than 3 hours, and to continuously monitor cars that for reasons beyond the control of the railroad would be parked there for longer than 3 hours.

Cities must at times rely on Federal and State assistance in sharing the costs of enforcement, response and training. The establishment of a Federal emergency response trust fund is a great idea but not an acceptable tradeoff. Our city cannot afford to give up its authority to protect the public, especially when the proposed language creating the trust fund suggests that it will be a stick disguised as as carrot, used to penalize recalcitrant local communities.

In the final analysis, our concern for safety has to outweigh our concern for national uniformity. States and their political subdivisions have legitimate police powers, and our public health and safety concerns are not always addressed in Federal law. Cities must be integrally involved in the regulatory and enforcement process, particularly because of the diminishing Federal enforcement role.

We do support a continued balance of Federal, State and local roles as it is more or less embodied in the existing statutory language; and we support the existing language of the hazardous materials regulations regarding nonpreemption determination and the advisory function of DOT's inconsistency rulings.

Finally, we believe that farsighted public and industry officials will realize that an appropriate balance of uniformity and stricter local safety standards will be better for the entire hazardous materials transportation industry.

Thank you.

[The statement follows:]

STATEMENT OF MAYOR ERNEST N. MORIAL, FOR THE CITY OF NEW ORLEANS AND THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENTS ON HAZARDOUS WASTES

Mr. Chairman and members of the subcommittee, I am George Ruberg, an environmental specialist in the Environmental Affairs Unit of the Mayor's Office in New Orleans.

I am testifying on behalf of Mayor Ernest N. Morial for the City of New Orleans, and also on behalf of the National Association of Local Governments on Hazardous Wastes, of which the City is a member. The National Association of Local Governments on Hazardous Wastes is an organization comprised of a national cross-section of large and small city and county local entities. It was established in response to the pressing need for local governments to take a strong and active role in hazardous waste policy issues. A members list is attached.[1] We appreciate the opportuinity to testify before this subcommittee to the Hazardous Materials Transportation Act.

Many cities throughout the nation, including New Orleans, have had to make issues of hazardous materials transportation, hazardous waste disposal, and emergency response a high priority. New Orleans is no exception. During Mayor Morial's first year in office, he developed a new emergency response plan for the City and initiated what has become an annual mock disaster exercise. During the past two and a half years, the City, through the Mayor's Environmental Affairs Unit, has increased efforts to prevent, and improve our preparedness to respond to, hazardous materials transportation incidents. In May of 1982 the Mayor's Advisory Council on Hazardous Materials was established to assist the City in developing recommendations for hazardous materials accident prevention, response, and training.

We have identified over 100 industrial facilities, 200 cargo handling facilities, 83 rail/waterway interface points, and scores of truck terminals dotting the Mississippi River in southeast Louisiana. By volume of cargo, New Orleans has the largest port in the country. Obviously, New Orleans is a major through route and transfer point for large quantities of hazardous materials.

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[1] Retained in committee files.

I am here today to express our support for maintaining a strong role for local communites in the Federal/State/local partnership which addresses hazardous materials regulation and accident prevention. We are opposed to any absolute expansion of the already broad preemptive language of the Hazardous Materials Transportation Act, and we specifically oppose the preemption provisions of the proposed legislation from the "Hazardous Materials Transportation Coalition".

It is local fire departments and our police departments which are the primary and sometimes the only responders to hazardous materials accidents. In New Orleans, in one recent 17 month period our fire department responded to 73 incidents involving 59 different chemicals. It is also the City's agencies which have the greatest enforcement presence in the community. We must be able to set higher standards of safety when it is appropriate, whether this is in the area of accident reporting, restricted access routes, advance notification or other areas.

It is a misconception to believe that local communities want to establish frivolous detours and roadblocks to industry. In New Orleans much of our economy is based on handling cargo. We believe, for instance, that local advisory councils can be appointed, with industrial representation, to assist in the review and development of local legislation based on knowledge rather than emotion. For example, our local Advisory Council has worked for nearly two years assisting us in data analysis, response planning, and regulatory review and the Mayor's Environmental Affairs Unit is only now preparing to submit carefully reviewed proposed ordinances to the City Council. We will be proposing an accident reporting requirement which is more flexible than the Federal law. And we are at the same time working with State and Federal officials here to eliminate the necessity of industry to have to call more than one public agency to report a hazardous materials accident.

It is also a misconception to believe that local communities cannot reach workable cooperative agreements with industry. In 1980, the City successfully negotiated an agreement with railroad companies that they would not store tank cars carrying hazardous materials in a rail yard in the French Quarter (an area densely populated with both residents and tourists) for more than 3 hours and to continuously monitor cars that, for reasons beyond the control of the railroad, will be parked for longer than 3 hours.

Cities must, at times, rely of Federal and State assistance in sharing the costs of enforcement, response, and training. The establishment of a Federal emergency response trust fund is a good idea, but not an acceptable trade-off. Our City cannot afford to give up its authority to protect the public, especially when the proposed language creating the Trust Fund suggests that it will be a stick disguised as a carrot, used to penalize recalcitrant local communites.

In the final analysis, our concern for safety has to outweigh our concern for national uniformity. States and their political subdivisions have legitimate police powers and our public health and safety concerns are not always addressed in Federal law. Cities must be integrally involved in the regulatory and enforcement process, particularly because of the diminishing Federal enforcement role.

We do support a continued balance of Federal, State, and local roles, as it is more or less embodied in the existing statutory language and we support the existing language of the Hazardous Materials Transportation Act regarding "non-preemptive determination" and the advisory function of DOT's inconsistency rulings.

Finally, we believe that far-sighted public and industry officials will realize that an appropriate balance of uniformity and stricter safety standards will be better for the entire hazardous materials transportation industry.

Senator **Danforth**. Thank you, sir.

Mr. White.

Mr. **White**. Thank you, Mr. Chairman.

I am Thomas White, councilmember from Greenbelt, Md., and chairman of the National League of Cities Energy, Environment and Natural Resources Committee.

I am here today to testify on behalf of the National League of Cities on the Hazardous Materials Transportation Coalition proposal to regulate the transportation of hazardous materials.

The National League of Cities has been an active participant in the development of the coalition proposal. We came into that process because of the current ambivalence in the regulation of the transportation of hazardous materials. Current attempts to regulate the transportation of hazardous materials are clearly unacceptable, both to government and to industry. No one is sure about their rights or their responsibilities.

Our priorities are very simple: adequate enforcement to prevent incidences and accidents, and improved emergency response capabilities.

What the cities get from the coalition proposal is twofold: The fiscal capacity to develop and provide adequate emergency response systems, and some clarification of the legitimate roles and responsibilities of each level of government with respect to the transport of hazardous materials.

Because cities bear the ultimate health and safety responsibility, we must have the fiscal resources to respond effectively. That capacity does not exist in far too many jurisdictions.

We believe that the coalition proposal, which would impose a fee on industries involved with hazardous materials and would distribute the revenue to State and local governments to establish and enhance their emergency response capabilities, will improve this capacity immeasurably.

The coalition proposal clarifies responsibilities by balancing health and safety needs with the needs of interstate commerce. The proposal delineates the mandatory duties of the Secretary of Transportation and also legitimizes the role of State and local governments by establishing concurrent jurisdiction over routing, including the time of day, escorting and prenotification.

Every compromise has its price. Local governments understand that we are agreeing to be preempted in some areas of regulating the transportation of hazardous materials. First, the authority to promulgate regulations pertaining to packing, repacking, handling, labeling, marketing and other operational characteristics would be the exclusive mandatory province of the Secretary of Transportation.

Second, State and local governments will be preempted from arbitrarily routing hazardous materials. State and local governments will have authority to impose only those routing requirements that are consistent with criteria that would be specified in the legislation.

Third, if a State receives trust fund moneys for emergency response purposes, the State and its political subdivisions will be preempted from levying its own fees on the transportation of hazardous materials.

While the National League of Cities supports the coalition proposal, there are two areas which we do have policy differences: Notification and imposition of local fees under some circumstances. We think shippers should be required to notify all cities along a prospective route when shipments of extremely hazardous or infrequently shipped hazardous materials are involved.

We agree that States and localities which accept money from the trust fund should be precluded from imposing additional fees on the transportation of hazardous materials unless a locality can demonstrate that it has unique hazardous materials problems or needs which are not being satisfied by its Federal trust fund suballocation.

Mr. Chairman, I would comment on the previous testimony of Ms. Douglass where you asked her what she felt the current status was. In my chair I gave it a three or a four. She gave it a seven. So I think if we split the difference, it is about a five.

I think the coalition proposal puts an emphasis on that emergency response capacity and capability that she said is most in need, and we agree that it is most in need; and then the enforcement clarification and defining of the roles would be the next priority.

[The statement follows:]

STATEMENT OF THOMAS X. WHITE, COUNCIL MEMBER, GREENBELT, MD., AND CHAIRMAN, NLC COMMITTEE ON ENERGY, ENVIRONMENT & NATURAL RESOURCES FOR THE NATIONAL LEAGUE OF CITIES

Mr. Chairman, members of the Subcommittee. I am Thomas X. White, Councilmember from Greenbelt, Maryland and Chairman of the National League of Cities Energy, Environment and Natural Resources Committee. I am here today to testify on behalf of the National League of Cities and the 15,000 cities in every part of the nation that NLC represents, on the Hazardous Materials Transportation coalition proposal to regulate the transportation of hazardous materials.

NLC has been an active participant in the development of the coalition proposal. Two of NLC's policy committees—Transportation and Communications, and Energy, Environment and Natural Resources—as well as our 49 state municipal associations, have been kept apprised of developments during the negotiating process. Our entire membership has voted to adopt policy (a copy of which is attached) on this issue for each of the last two years.

We came to the negotiating table because of the current ambivalence in the regulation of the transportation of hazardous materials. Obviously, no city wants its main thoroughfares to be the principal arteries for the movement of hazardous materials. But, hazardous materials are a fact of modern life and their movement will continue. And, while local governments would prefer to have sole authority to regulate hazardous materials transport within their boundaries, we understand that a maze of conflicting regulations, requirements, and fees imposes a significant and undue burden on neighboring cities and ultimately makes such transport unsafe.

The Hazardous Materials Transportation Act [HMTA] has never been implemented in the manner envisioned by this committee. It has been plagued by insufficient personnel and inadequate resources. While the law assumes DOT will develop the rules, enforce them and coordinate emergency response, that simply has not been done and is unlikely to be done given current resources. As a result, regulation of hazardous materials has, by default, become the responsibility of state and local governments. the result is confusion, conflict and endless litigation.

The current attempt to regulate the transportation of hazardous materials is clearly unacceptable—both to governments and to industry. No one is sure about their rights or their responsibilities. Smaller cities, without sophisticated legal capacity, are reluctant to regulate hazardous materials transportation in their communities simply because they are uncertain about their legitimate sphere of influence. Other cities are moving ahead with local ordinances which meet their public health and safety needs but often directly and adversely impact neighboring cities. As a consequence, the courts are defining the parameters of responsibility case-by-case and not necessarily with any degree of consistency.

Our priorities are very simple: adequate enforcement and emergency response capacity. The coalition proposal addresses part of this problem by creating greater certainty which is intended to eliminate much of the current litigation and by assigning greater responsibility at the local level. It also establishes a trust fund that will enable state and local governments to deal with at least part of the problem: training for emergency response.

Because of the current confusion, we believed it important that something be done to insure the safety of our citizens. We were willing to sit down with the diverse interests involved to explore common ground and to see if a compromise could be worked out. We believe the compromise proposal is a giant step in the direction of a workable solution.

What the cities get from the coalition proposal is twofold: the fiscal capacity to develop and provide adequate emergency response systems; and some clarification of the legitimate roles and responsibilities of each level of government with respect to the transport of hazardous materials.

As a recent article in "Smithsonian Magazine" stated, "Although the transportation of hazardous materials is clearly a national issue, the burden of preparing for an emergency and responding when one occurs falls squarely on states and localities." When an accident or spill occurs, it is the city fire department, police department, and emergency rescue service which are almost inevitably the ones immediately able to deploy personnel and equipment. It is ludicrous to send these people to the scene of an accident without the knowledge to deal appropriately with the emergency they confront.

In cities, because of their higher population densities and potential for traffic congestion, the dangers of accidents involving hazardous materials are, if anything, exacerbated. Evacuation, emergency response and remedial actions are many times more complicated in crowded cities. Because we bear the ultimate health and safety responsibility, we must have the fiscal resources to respond effectively. That capacity does not exist in far too many jurisdictions. We believe that the coalition proposal which would impose a fee on industries involved with hazardous materials and would distribute the revenue to state and local governments to establish and enhance their emergency response capabilities, will improve this capacity immeasurably.

From the local perspective, an enhanced emergency response capacity has far more significance than at first blush. Local governments are no longer exempt from liability and can be charged with a lack of action as well as negligence. It makes little sense to approach the problem from this end. As elected officials, we believe it is our duty to develop a response system to protect the public and the environment before it becomes a matter of liability. And, clearly, industry agrees by its willingness to fund such activities at the state and local level.

The coalition proposal clarifies responsibilities by balancing health and safety needs with the needs of interstate commerce. The proposal delineates the mandatory duties of the Secretary of Transportation and also legitimizes the role of state and local governments by establishing concurrent jurisdiction over routing (including time of day, escorting, pre-notification).

As you well know, every compromise has its price. I assure you, local governments understand that we are agreeing to be preempted in some ares of regulating the transportation of hazardous materials.

First, authority to promulgate regulations pertaining to packing, repacking, handling, labeling, marking and placarding of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of packages or containers represented, marked, certified, or sold for use in the transportation of hazardous materials would be the exclusive mandatory province of the Secretary of Transportation. Other levels of government will be totally precluded from regulating in these areas.

Second, state and local governments will be pre-empted from arbitrarily routing hazardous materials. Jurisdiction over routing will be a concurrent responsibility of all three levels of government. State and local governments will have authority to impose only those routing requirements that are consistent with criteria specified in legislation. Let me point out, that the coalition proposal's criteria are basically a codification of existing court-developed law.

Third, if a state receives trust fund monies for emergency response purposes, the state and its political subdivisions will be pre-empted from levying fees on the transportation of hazardous materials.

Let me reiterate that local governments are willing to cede their right to regulate the transportation of hazardous materials in some areas in exchange for a clarification of what they can legitimately regulate in other areas and for funding for training emergency response teams.

While the National League of Cities supports the coalition proposal, there are two areas in which we do have policy differences: notification and imposition of local fees under some circumstances. We think shippers should be required to notify all cities along a prospective route when shipments of extremely hazardous or infrequently shipped hazardous materials, potentially requiring evacuation or other special anticipatory emergency response preparations, are involved. Such notification should also be required when there is a substantial change in routing plans.

We agree that states and localities which accept money from the trust fund should be precluded from imposing additional fees on the transportation of hazardous materials, unless a locality can demonstrate that it has a unique hazardous materials problem or need which is not being satisfied by its federal trust fund suballocation. In such an instance, the local government should be permitted to levy its own fees on such transportation.

Thank you, Mr. Chairman. I appreciate the opportunity to testify and would be pleased to answer any questions you may have.

Senator **Danforth**. Do you all agree that, with respect to hazardous material, the response area is the area that needs the greatest additional attention?

Ms. **Espinosa**. I believe from New Mexico's standpoint it probably is highly significant. And due to our new legislation in the State, we are putting emphasis in that area. Along with that, of course, goes training for our response personnel at the local level in particular, because they do not often have the moneys.

Also, as well as that, the enforcement level must be increased, both at the Federal and the State levels. We feel we have a fairly good enforcement force, but it is lacking in certain areas since we do have a large State to deal with.

Mr. **White**. Two of the most serious incidences in the Washington metropolitan area in the last 3 years occurred either within or just outside of the city limits of Greenbelt, which is a very small suburban jurisdiction within Prince Georges County.

I think we were extremely fortunate in both of those incidents. One was a gasoline truck that exploded at 10 p.m. during October 1981, and one was a propylene truck which was involved in an accident and turned over last year. And in both of those instances, there was only the loss of the equipment. There was no loss of life, and there was no serious property damage.

I think that a lot of that had to do with the fairly good response time of the Maryland State Police and the Prince Georges County emergency response team; but I think also a lot of it was attributed to luck. And what I would like to see happen is to close that gap so that the respondents on the scene really act in a professional manner and know what they are dealing with, know how to deal with it, and know how to safeguard the neighborhoods and the population centers.

Mr. **Ruberg**. Mr. Chairman, we have also made emergency response planning one of our higher priorities; and I think most communities in Louisiana have. But we also look at enforcement as a prevention program. So I would say that both enforcement and emergency response deserve very significant consideration.

Senator **Danforth**. Mr. McKown.

Mr. **McKown**. I think that emergency response is very important. However, I think we need to put a focus, a lot of attention, on preventative measures to possibly prevent any emergency. However, again, I repeat that the emergency response is very significant in this whole thing also.

Senator **Danforth**. Now, as I understand it, Mr. White, you support the coalition's proposal, and you do so on behalf of the National League of Cities.

Mr. **White**. Yes, Mr. Chairman. There are two policy committees within NLC addressing this issue. One is the Transportation and Communications Policy Committee, and the other is the committee which I chair, the Energy, Environment and Natural Resources.

Both of those policy committees have approved, during the past 2 years, policy statements in NLC's national municipal policy which closely and generally agree with the direction of the coalition proposal.

Senator DANFORTH. Mr. Ruberg, do I understand your testimony is opposing the coalition proposal?

Mr. RUBERG. On the question of the preemptive language, yes, sir.

Senator DANFORTH. And how about the other witnesses? What would be your position, if you have one?

Ms. ESPINOSA. Mr. Chairman, at this time we do not have an official position. We are studying and have been studying the coalition proposal for some several months now. We would, however, caution against any preemption language and would hope that we could work toward a cooperative level between the State and Federal Government relative to the unique constituency within each State.

Ms. ROWE. I am going to answer for Mr. McKown. He works mostly with the pipelines. We have not addressed any position on the coalition, and, to be honest with you, I would have to talk to someone else about that. But I know that we would oppose anything that is preemptive of the States in that respect.

Senator DANFORTH. You know, I spent 8 years of my life in State government, believe in State government, believe that a lot of the decisions should be made in State government. I also cut my teeth on the question of where should a prison be located in Missouri, and that became the biggest hot potato. Every State legislator, it seems, was jumping into the fray saying well, it is not going to be here.

And we now have exactly the same situation developing with respect to where should dioxin be stored. There is enormous emotionalism and very little political credit going to the person who says well, I think we can handle it. In fact, it is suicidal, I think, for a politician to do that.

But I take it that, particularly Mr. Ruberg, you do not share my concern in this area.

Mr. RUBERG. Mr. Chairman, I tried to make a distinction between prohibiting cargo coming in entirely and the safe handling of it, because of, as I said, our economy—the port industry, for instance, in New Orleans is very important to our local economy. So we are not trying to restrict or prohibit cargo which has a destination or delivery point in the city.

Most of the truck traffic that comes through New Orleans does seem to have a destination or delivery point within the city. We are concerned with safety and not with prohibiting those hazardous materials from moving.

Senator DANFORTH. But is not the political reality that there are going to be people who just make a lot of hay in their own political popularity by being the great safety advocate or the great consumer advocate or whatever the person is going to say. This is dreadful. We cannot have this in our community. And I am going to lead the charge in fighting this outrage.

Mr. RUBERG. Mr. Chairman, it is conceivable to me that elected officials would be creating a greater liability for themselves if they pointed out a problem without then addressing it.

Senator DANFORTH. I think that is just a bonanza for a politician to view with alarm and to point out a problem without really addressing it.

Mr. RUBERG. Precisely; which is why I have tried to give the example of our creating an advisory council in attempting to gather data. We have not rushed into passing massive ordinances on the basis of an emotional reaction. In fact, we have yet to submit a proposed ordinance to the city council.

We have spent at least 2 years reviewing the New Orleans situation. I think we can point to our city at least as a community where we have attempted to make a knowledgeable review of the situation and not an emotional one. And I do not think you will see or read about any New Orleans elected officials who have done what you have described.

Senator DANFORTH. I admire you.

How about you, Secretary Espinosa? Do you share this concern, or do you think that Mr. Ruberg is right in his comments that it is just not that big a problem?

Ms. ESPINOSA. Well, Mr. Chairman, I do think it cuts both ways. This emotionalism can certainly happen at the Federal level as well with our elected officials.

I do believe, Mr. Chairman, that our experience in New Mexico has been both. We saw a lot of emotionalism, the waste isolation project coming in. Many citizens did not want that in the State. They did not want that low-level waste stored in the State.

But I think that we have overcome that emotionalism, and I think that our elected officials for the most part, Mr. Chairman, certainly can get very emotional about hazardous materials. But most of our economy in the State and our tax dollars come from oil and gas production and coal production, and the movement of hazardous materials within our State is extremely common.

I agree with Mr. Ruberg that we are very much concerned with safety and prevention; and I think that our emergency management task force has helped us to deal both with the industry and the legislature and with the executive branch in State government to get a reasoned response and reasoned planning toward transportation of hazardous materials, an accident response.

I would caution that we not sell the State government short. Certainly there will be those politicians who will make hay on this issue. It can get a lot of votes in the district. But I think in New Mexico and I think that probably most States are not unlike us. We can deal with that emotionalism on a rational basis.

Senator DANFORTH. Good. Does anyone else want to add to that?

Ms. ROWE. I would just say we agree that it does cut both ways, and the States are going to be better prepared, we believe, to deal with the problems that are inherent right there in the State.

And also I would like to agree with the fact that States are not looking to block any kind of movement, but they feel like they are the best able to deal with the problem once it is in the State, particularly if it has come to rest in the State. There is attached to our testimony the NARUC's proposal of a grant-in-aid program for hazardous materials, again where States would be enforcing minimal Federal safety standards; and yet, if a State also has stricter, more stringent standards, then those would have to be given a certain amount of credit also. But the State would not be establishing the minimum standards themselves. We would be enforcing Federal ones.

Senator DANFORTH. OK. Thank you very much. Very helpful.

The next panel is the panel on pipeline safety: Don Merriman, president of Buckeye Pipeline Co.; Bernard Liebler, energy technology development, American Gas Association; Lawrence Ogden, vice president, construction and operations, Interstate Natural Gas Association.

Mr. Merriman, would you like to proceed?

STATEMENTS OF DON R. MERRIMAN, PRESIDENT, BUCKEYE PIPE LINE CO., ACCOMPANIED BY PATRICK CORCORAN, EXECUTIVE DIRECTOR, ASSOCIATION OF OIL PIPE LINES; BERNARD LIEBLER, MANAGER, ENERGY TECHNOLOGY DEVELOPMENT, AMERICAN GAS ASSOCIATION; AND LAWRENCE J. OGDEN, VICE PRESIDENT, CONSTRUCTION AND OPERATIONS, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Mr. MERRIMAN. Mr. Chairman, my name is Donald Merriman. I appear here today on behalf of the Association of Oil Pipe Lines and the American Petroleum Institute.

AOPL is an unincorporated association of 93 common carrier oil pipeline companies, and the API is a petroleum industry trade association with 250 corporate and 6,500 individual members engaged in almost all phases of the petroleum industry.

I am president of Buckeye Pipe Line Co. and an officer of the association. I have with me today Patrick Corcoran, who is the executive director of the Association of Oil Pipe Lines.

I have submitted a statement for the record, but will merely highlight today its contents.

The proceedings before the Congress to reauthorize the Department of Transportation's pipeline safety programs provide us an opportunity to comment on the safety record of the Nation's network of pipelines transporting hazardous liquids.

I submit that the facts speak for themselves and demonstrate a safety record unapproached by any other mode of transportation. The 175,000 miles of interstate petroleum pipelines transport one-quarter of this Nation's intercity freight business. In 1982 this amounted to 570 billion ton-miles.

In 1982, there was one fatality resulting from oil pipeline operations, and that was the result of outside party equipment rupturing the line. In the 12-year period from 1971 to 1983, during which time the volumes of petroleum transported by pipeline increased significantly, there were an average of 4 fatalities per year, an average of 12 injuries, and the number of total pipeline accidents declined by one-third.

There are two significant causes of pipeline accidents. The largest, 34 percent of all of the pipeline accidents in 1982, which occasioned 43 percent of all the spillages of petroleum, resulted not from the operations of our pipelines but from damage caused by an outside party excavating for underground facilities or grading road or land.

The industry has developed a significant number of defenses against these incursions. We regularly patrol our rights-of-way by air, by vehicle, or by foot. Aboveground pipeline markers are along the line, and at road and railroad crossings. The industry's companies participate in one-call systems where underground excavators can, through a central facility, notify operators of underground facilities about proposed work. And finally, on new facilities we can reroute them away from the congested areas where most of the excavating activity takes place, or if that is not possible, provide additional depth or mechanical protection.

The second largest number of accidents result from corrosion, primarily to the external surface of the pipe. The industry has made significant progress in controlling corrosion through the application of pipe coatings and cathodic protection systems.

The Department of Transportation's current regulations require coatings on new pipelines, electrical inspection and testing of all lines, cathodic protection systems on all coated pipe, and where active corrosion is detected on bare pipe. Internal corrosion can be mitigated through the use of inhibitors or dehydration of the product.

I would just like to say that the liquid petroleum pipeline industry believes it has an unexcelled safety record which we believe attests to the sufficiency of the current regulations and the industry's continuing efforts to develop better preventive techniques.

Thank you.

[The statement follows:]

STATEMENT OF DONALD R. MERRIMAN, ASSOCIATION OF OIL PIPE LINES

Mr. Chairman and Members of the Subcommittee: My name is Donald R. Merriman. I appear on behalf of the Association of Oil Pipe Lines [AOPL] and the American Petroleum Institute (API). The Association of Oil Pipe Lines is an unincorporated association of ninety-three common carrier oil pipeline companies. The American Petroleum Institute is a petroleum industry trade association with two hundred and fifty company members and six thousand five hundred individual members involved in virtually every phase of the petroleum industry. I am President of Buckeye Pipe Line Company and an officer of AOPL.

Reauthorization of the Department of Transportation's pipeline safety program has brought into focus the issue of the safety of our Nation's network of pipelines transporting hazardous liquids.

Petroleum pipelines have over the years compiled an extraordinarily fine safety record while transporting approximately 25% of all of this Nation's ton-miles of intercity freight. Specifically, in 1982 petroleum pipeline movements of 3.4 trillion barrel miles or 570 billion ton-miles accounted for 24.8% of interstate traffic. Between the years 1971 and 1982, an average of only four fatalities a year occurred as a result of liquid pipeline operations. Injuries during that time span averaged 12 per year. No other mode of transportation even approaches this safety record.

While the volumes transported by liquid pipelines have increased significantly during the last twelve years, the number of accidents per year have declined by one-third. The AOPL and API believe that current industry practices and D.O.T. requirements adequately protect the public interest.

The largest single cause of pipeline accidents does not stem from the design, construction and operation of our liquid pipeline network, but from third party encroachment on our pipeline rights of way. Such accidents occur during the installation of other underground structures in the pipeline right-of-way or when road or land surfaces are graded or excavated by third party contractors. In 1982, 34% of all pipeline accidents were the result of such acts by third parties.

In order to minimize such third party accidents, present D.O.T. regulations provide for routing proposed pipelines around congested residential and industrial areas where possible. It is in these areas that most third party activity takes place. Where such rerouting is not practical, extra depth of cover or additional mechanical protection is required. Aboveground pipeline markers are required at intervals along the line and at road and railroad crossings to alert third parties to the pipelines' location. Updated maps of pipeline rights-of-way and depths are filed with local contractors and public agencies to alert those who might undertake construction on lands traversed by petroleum pipelines.

Today there exist "one-call" systems in a number of areas whereby contractors or members of the public can telephone a special number and receive information on the location of petroleum pipelines. One-call systems incorporate a notification center which is accessible by calling a toll-free number. This center establishes a communication link between those who dig underground and those who operate underground facilities. The majority of the states presently have some form of one-call system. Upon notification from any source, our companies are only too willing to send out a crew to mark the location of our pipelines for anyone proposing construction work in the area.

Pipeline operators engage aerial patrols that frequently cover the line looking for any anomalies or activities along our rights-of-way. If construction equipment is spotted near the location of a petroleum pipeline, the company dispatches pipeline personnel to inform the contractor of the existence and location of the crude oil or products pipeline in the area.

The second largest cause of pipeline accidents is corrosion. In 1982, external and internal corrosion caused 27 percent of all pipeline accidents. Advancements in modern technology have contributed greatly in the control of pipeline corrosion.

The external corrosion of buried steel is an electro-chemical process. Variations in the surface texture of the pipe, coating condition and soil chemistry can cause electric currents to flow in the pipe and the soil. These currents leave the pipe at anodic areas, travel through the soil and re-enter the pipe at cathodic areas. Metal is eroded away at the anodic areas. If this corrosion is not arrested it can eventually perforate the pipe walls. This process can be arrested by the application of a technique called cathodic protection. The technique eliminates anodic areas on the pipe by forcing current to flow from the soil to the pipe throughout its length so that the entire pipeline becomes cathodic, hence the term cathodic protection.

The present regulations require application of protective coatings to new pipelines; electrical inspection and testing of pipelines; the application of cathodic protection to coated pipe and, where active corrosion is detected, to bare pipe; and the proper maintenance of cathodic protection systems on pipelines.

Internal corrosion can occur when water comes out of solution in the flowing product as its temperture drops. This is controlled by injecting minute amounts of chemical compounds called corrosion inhibitors into the product. Another approach commonly used in liquified petroleum gas lines is dehydration of the product to remove free water entirely. Current regulations require the mitigation of internal corrosion where it exists and periodic internal monitoring to insure that internal corrosion is under control.

As an aid in determining whether damage has occurred to pipe from dents, gouges or corrosion, pipeline operators have used various types of instrumented pigs which, with modifications to a pipeline, sometimes can be run in the flowing stream. The data provided, if interpreted correctly, may locate anomalies in the pipe diameter or wall thickness. These devices are not consistently accurate and suffer from problems of reliability. Further development work is being pursued.

Leak detection is accomplished by 24-hour monitoring of pipeline conditions at pipeline control centers. Changes in pressure and flow rates can indicate a possible leak situation. Such changes are immediately checked by pipeline personnel.

Analysis of the statistics dealing with liquid pipeline accidents indicates that the frequency of such accidents is not sufficient to warrant the imposition of additional regulations or the expenditure of significant additional dollars to supplement present safety programs.

H.R. 3314 contains a requirement for mandatory periodic hydrostatic testing of pipeline systems. Hydrostatic testing requires taking the pipeline out of service, filling it with perhaps hundreds of thousands of gallons of water and applying pressure. The pressure (generally 125 percent of the line's maximum operating pressure) is held for a required number of hours to detect defects or leads in the line.

Hydrostatic testing ensures the structural integrity of a pipeline and is required by the D.O.T. regulations for new construction; existing systems that are relocated, replaced or otherwise changed and older pipelines that transport highly volatile liquids. However, requiring such testing at regular intervals throughout the life of the pipeline raises myriad problems. One serious drawback is the amount of water that would be required: AOPL and API estimate that just one industry-wide testing cycle would require at least 5.9 billion gallons of water, and necessitate treatment of that water before it could be released into the surrounding environment. Acquisition and disposal problems of such quantities of water would be monumental, particularly in the western states, and the cost to the industry of one round of such testing is estimated to be at least $500 million. Because hydrostatic testing can take weeks or even months, depending upon the size and length of the pipeline, supply interruptions could occur tht would not only prove disruptive for consumers, but would result in the shipment of petroleum and petroleum proudcts by less safe modes. Because such testing still would not reduce the frequency of the major accident source, third party interference, we feel that the problems associated with this approach far outweigh any possible benefits.

In conclusion, the liquid petroleum pipeline industry has an unexcelled safety record which attests to the sufficiency of current regulation and the industry's continuous efforts to develop more accurate preventative techniques.

Senator DANFORTH. Thank you, sir.

Mr. Liebler.

Mr. LIEBLER. Thank you, Mr. Chairman.

My name is Bernard Liebler. I am currently on loan to the American Gas Association as manager of energy technology development, from the Brooklyn Union Gas Co. where I have spent the last 8 years both working in and supervising their code, standards, and environmental group, which handles pipeline safety matters.

The American Gas Association appreciates this opportunity to present its views regarding the reauthorization of the Natural Gas Pipeline Safety Act, as amended. We support strongly such reauthorization.

It is our firm belief that the current regulatory scheme, which includes the Federal-State partnership in the form of State grants-in-aid and State enforcement certification, has proven to be extremely effective.

Current statistics compiled by the National Safety Council regarding worktime lost as a result of on-the-job accidents show the natural gas industry to be safer than all other areas for which the statistics are collected. These include such areas as retail sales and service industries, which are not normally viewed as particularly hazardous.

In addition, the figures published by the National Transportation Safety Board also show that the natural gas industry has a far lower accident rate than all other transportation industries, both in individual statistics and combined average statistics.

We believe that this exemplary record reflects two things. One: The industry has always maintained and continues to maintain safety as its fundamental operating precept. Two: The effective regulatory structure fostered by the Natural Gas Pipeline Safety Act.

This structure has been in place a little more than a decade. While the absolute numbers of accidents have not changed very dramatically, the quantity of gas delivered by the overall system, which has been expanded during that time, has increased by over 40 percent. We believe that this fact alone would justify the current scheme.

We would be remiss, however, if we did not comment on the benefits of the existing Federal-State partnership in the implementation of the Natural Gas Pipeline Safety Act. While all States do not have precisely the same regulations, they are tailored to the needs of the State geographically, demographically, et cetera. They are, by mandate, all based upon the Federal minimum safety standards 49 CFR 192. Thus, they all share a commonality which provides both the uniformity and the flexibility necessary to operate both efficiently and safely a 1 million mile pipeline system that spans the entire country.

I understand that the next panel will discuss State taxation of interstate pipeline property.

Thus, in conclusion, I would like to mention that with respect to that subject, the AGA believes that Federal legislation is needed to end State discrimination in the assessment of property taxes on interstate pipelines. More detailed comments in this area are included in the formal statement.

Thank you.

[The statement follows:]

STATEMENT OF BERNARD LIEBLER, MANAGER, ENERGY TECHNOLOGY DEVELOPMENT, AMERICAN GAS ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

The American Gas Association (A.G.A.) is a national trade association composed of nearly 300 natural gas distribution and transmission companies that serve approximately 160 million consumers in all 50 States. A.G.A. member companies account for about 85 percent of the nation's total annual gas utility sales.

A.G.A. is pleased to present its view on reauthorization of the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended. As the members of this Subcommittee know, the present law authorizes the operation of the safety program for the transportation of natural gas. It also administers the grant-in-aid program for States that assist the Materials Transportation Bureau (MTB) in the enforcement of the Natural Gas Pipeline Safety Act (NGPSA). A.G.A. believes that reauthorization of the present law would permit continued effective enforcement of the NGPSA and provide maximum public safety.

Natural Gas pipelines are subject to the design, construction, operation, and maintenance safety standards prescribed in Title 49 of the Code of Federal Regulations, Part 192. These regulations are enforced by the MTB under the authority of the NGPSA (49 U.S.C. Section 1671 et seq.). We believe that part 192 applies adequate safety standards for operation and maintenance of the one-million-mile natural gas pipeline system currently in place.

The fact that pipelines meticulously conform to the safety requirements of Part 192 is confirmed by A.G.A. data that indicate that the incidence of lost workdays and fatalities of pipeline employees is very low. Furthermore, according to the National Safety Council (NSC), for 1982, accidents which caused days away from work or fatalities in the pipeline transportation industry were 0.67 per 100 full-time employees. This accident rate is lower than for any other transportation industry and compares favorably, for example, with local and suburban transit (7.12 per 100 employees) and trucking (6.54 per 100 employees). The pipeline transportation rate is also lower than the total industry average for all other industries reported by the NSC. Those other industries are mining (1.70 per 100 employees); construction (2.92 per 100 employees); manufacturing (1.91 per 100 employees); wholesale and retail trade (2.0 per 100 employees); and services (2.98 per 100 employees).

These figures are evidence of the safety of natural gas transmission and distribution operations. The safety efforts of pipeline operators become even clearer when one considers that 61 percent of all gas pipeline accidents were caused by outside force damage, not pipeline operations.

The National Transportation Safety Board (NTSB), in its annual analysis of transportation fatalities for 1982, found that fatalities involving pipeline transportation represented only a miniscule percentage of those involved in virtually any other category of transportation. While one fatality is too many, the 31 pipeline accident fatalities compare favorably with fatalities suffered in the areas of aviation (1,487), marine activities (1,329), railroads (596), and highways (43,990). We believe that the NTSB analysis leads to the inexorable conclusion that pipeline transportation is the safest mode of transportation available.

A.G.A. believes that the excellent safety record of pipeline transportation proves that pipelines are dedicated to providing safe service to the public. Furthermore, this safety record offers prima facie evidence that the current level of regulation of pipeline operations effectively ensures this safe service. Greater regulation would simply burden the industry, with no increase in safety, but with a concomitant increase in the cost of service. The authorization under discussion here should allow MTB and the States to continue to provide the enforcement authority that has traditionally been effective in guaranteeing safe operations.

A.G.A. supports the federal-state partnership idea for enhancing safety in the natural gas transportation system. The experience of our members is that the safety program would be unworkable without the voluntary support and assistance of the state governments. It is important to the success of subsequent safety legislation that the States continue to take a major role in the pipeline safety program. Only in this way can the gas industry as a whole work under a uniform set of regulations, while allowing States to maintain autonomy in this area.

Although no similar legislation has been introduced in the Senate, we would like to take this opportunity to make a few comments on a proposal to revise the testing and inspection requirements for pipelines, H.R. 3314. This bill would direct the Secretary of Transportation to promulgate regulations to require tests and inspections of pipeline facilities at intervals no less frequently than once every five years. For several reasons we strongly oppose this legislation.

First, adequate testing and inspection requirements are already in place. There are 12 different sections of 49 CFR Part 192 which, including subsection requirements, total 19 specific regulations requiring testing and inspection of pipelines and pipeline facilities at varying, though limited, time intervals. The maximum time interval for all but one of these inspection requirements is at least once each year, but with intervals not exceeding 15 months. Many companies inspect their facilities more frequently. The one exception to the above time requirement is that for "Leakage surveys of the distribution system outside the principal business area (which) must be made as frequently as necessary, but at intervals not exceeding five years" (49 CFR Part 192.723(b)(2)). A.G.A. believes the present inspection requirements are adequate and effective, as the industry's safety record shows.

Second, even though there are non-destructive devices for the internal inspection of pipelines (i.e., ultrasonic probing), only a small percentage of pipelines can be tested in this way, because of line size, sharp bends in the pipe and other factors. The only method that could be used for a testing program of the magnitude required by H.R. 3314 would be hydrostatic pressure testing, and we believe that hydrostatic testing of one million miles of pipelines every five years is an impossible task.

If hydrostatic testing is required, the following procedure would be involved: (1) taking a section of pipeline out of service and isolating it; (2) evacuating all natural gas to the atmosphere; (3) running a cleaning device called a "pig" through the section; (4) filling the section with water; (5) bringing the water up to the desired pressure and maintaining that pressure for a specified period of time; (6) disposing of the water in an environmentally acceptable manner. This is a simplified explanation of the procedure, as each step requires many difficult and costly tasks—such as digging up and cutting the pipeline, installing and removing the pig launcher and retrieval systems, and rewelding and inspecting the pipeline, which is then recoated, rewrapped and reburied. For hundreds of communities that are serviced by a single pipeline, hydrostatic testing would necessitate providing either duplicate facilities or alternate methods (e.g., propane-air or LNG) to continue supplies to the customer during the outage. Both alternatives would be costly.

Third, since natural gas is used year round, weather conditions and heating requirements would force testing programs to take place primarily in the off-season, summer months; therefore, approximately 20% of the total pipeline system (or 200,000 miles of transmission pipelines and distribution mains) would have to be tested each summer. This activity would require additional personnel since it would be done in addition to normal construction and maintenance programs, as well as at the same time our industry's refill of underground storage and LNG facilities in anticipation of winter peaking requirements.

Other problems would be encountered if a comprehensive testing program of the magnitude envisioned in H.R. 3314 were mandated:

1. Wasteful loss of gas through blow-down and purging each section of pipeline to be tested.
2. Costs to the industry in excess of $2.4 billion over the next five years would be required.
3. Unavoidable disruption of reliability and quality of service would have to ensue in order to perform this testing, if it is even possible. This would result in an ineffective effort to improve pipeline safety, with great costs to the consumer, both financially and environmentally.

As we have stated, the safety record of our industry is excellent. The National Transportation Safety Board, in its 1982 annual analysis of transportation facilities, indicated that transportation by pipelines is the safest mode of transportation available—and the present law has helped to make it this way. Onerous legislation, like H.R. 3314, would make it more difficult for both pipeline and distribution companies to take the actions that would truly maintain and improve pipeline safety. Instead, A.G.A. supports simple reauthorization of the Natural Gas Pipeline Safety Act of 1968, as amended.

STATE PROPERTY TAXATION OF INTERSTATE PIPELINES

The A.G.A. is pleased that the Subcommittee has also scheduled witnesses to speak today on the issue of state property taxation of interstate pipelines. In times of increasing natural gas prices, the A.G.A. is committed to ensuring that all possible steps are taken to minimize cost to consumers. One of these steps would be to end state discrimination in the assessment of property tax rates on interstate pipelines. Some States impose a higher property tax rate on public utility property, including interstate pipelines, than is assessed on other types of commerical and industrial property. This is particularly inequitable in the case of interstate pipelines, because the tax burden is imposed on residents of other States through higher gas costs, yet these customers receive none of the benefits of those taxes. Furthermore, the pipeline company rarely has a choice of States in which to locate the lines and is unable to move the pipe once it has been situated. We strongly support the enactment of legislation which will provide the same protection to interstate pipelines as has been afforded to virtually all other forms of interstate transportation: railroads, motor carriers, and airlines.[1]

Rising natural gas prices are primarily caused by: (1) increases at the wellhead; and (2) federal, state and local taxes. A 1983 A.G.A. Energy Ananysis ("Cost Components of the Average Gas Price," copy attached) points out that the tax burden on the natural gas distribution and transmission industry is "significantly higher than the average for all industries. . . . This is particularly evident for state and local taxes [which] . . . represented an average of 63% of net income for all industries. . . ." Under Federal Energy Regulatory Commission (FERC) regulations, state and local taxes imposed on pipelines are flowed directly through to natural gas consumers as a component of the cost of service. By the same token, any decrease due to lower taxes is also reflected in a lower cost of service to the consumer.

Since the enactment of the Natural Gas Policy Act of 1978 (NGPA; Pub. L. No. 95-621), the U.S. gas supply outlook has improved dramatically. However, this progress has been complicated by major increases in gas prices and a falling demand for natural gas in the indistrial sector. Indeed, gas utility sales to industrial markets have at one point fallen more than 20% below traditional levels—although some of this lost load has subsequently been regained as gas prices have stabilized and the economy has begun to recover. Loss of industrial load is typically due to: (1) fuel switching; (2) decreased industrial production due to the recession; (3) price-induced conservation; and (4) plant closings. Although less gas is sold as a result, the costs of doing business (e.g., maintenance of equipment, wages, state and local property taxes) remain the same. However, there are fewer customers left on the system to share these fixed costs. Thus, further loss of industrial load will force each of these remaining customers (for the most part residential and commerical users) to bear a higher proportion of the fixed system costs as a component of their gas bills. Such a cost impact, of course, occurs in addition to the direct impact of passing through the higher taxes imposed by another State.

To the extent that enactment of Federal legislation to end and prevent these discriminatory state tax practices results in lower taxes paid by interstate pipelines, these savings will be passed through to consumers through a lower cost of service. This in turn may help in regaining lost industrial load and thus reduce the proportionate share of fixed costs borne by each ratepayer.

We do not advocate doing away with state and local taxes, of course. We merely seek equity on two levels: (1) the same Federal statutory protection afforded to other interstate modes of transportation; and (2) the same tax treatment afforded to other commercial and industrial properties within a particular jurisdiction.

Thank you for the opportunity to express our views on these issues of vital importance to the regulated natural gas industry.

Senator DANFORTH. Thank you, sir.

Mr. Ogden, do I understand that you do not have a statement?

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[1] Antidiscrimination provisions are contained in the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210, railroads); Motor Carrier Act of 1980 (Pub. L. No. 96-296, motor carriers of property); Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248, airlines); and Bus Regualtory Reform Act of 1982 (Pub. L. No. 97-261, all motor carriers).

Mr. OGDEN. That's correct, Mr. Chairman.

Senator DANFORTH. Would you like to ad lib anything?

Mr. OGDEN. Nothing other than to say that I endorse Mr. Liebler's comments.

Senator DANFORTH. Thank you very much.

Are your positions, Mr. Liebler, and Mr. Merriman, that the State enforcement programs are good ones?

Mr. MERRIMAN. I think there is a difference between the State enforcement programs for liquid pipelines, which I represent, and natural gas.

The States vary in their enforcement programs. Some States take an active part in overseeing the design, construction and installation, as well as the Federal Government. Some States take no interest at all.

And I think, as was testified to before, there have not been any grants-in-aid from the Federal Government to any State programs, although I understand that there was some consideration. I heard Ms. Douglass say that they are proposing zero.

Senator DANFORTH. That is right.

I think there are two issues. One is the efficacy of the State programs for gas and for oil; and then the second question is, is Federal assistance necessary, and if so, at what level.

Mr. MERRIMAN. I can say that those States that do take an interest in the design, construction, installation, operation of oil pipelines have various methods of funding. One State in particular, New York State, when they sent an inspector out on a hydrostatic test on new construction or something like that, they sent a bill afterwards. That is how they fund it. Other States do not do that.

Senator DANFORTH. What is your view of the effectiveness of the State program?

Mr. MERRIMAN. Well, I think that one of the things that has been talked about here today is the effectiveness of response in the event of an emergency.

Senator DANFORTH. No. I mean just the inspection part of the program.

Mr. MERRIMAN. Well, except for new construction in New York State and I believe in the State of Michigan, the other States—we operate in 10 States in the Northeast part of the United States. I do not believe any of the States send out any inspectors.

Senator DANFORTH. Mr. Liebler, do you have any further comments?

Mr. LIEBLER. Well, essentially I think that if you look at the size of the natural gas system, we are talking basically, with both distribution companies and transmission companies, of approximately 1 million miles of pipeline. I do not offhand remember the quantity of gas—well roughly 37.4 trillion cubic feet were transported in 1982. The number of accidents relative to that quantity and relative to the amount of material in the system is extremely small.

And, speaking as a scientist and going back to your statement earlier, that if you were scoring things from 1 to 10, you cannot have a perfect system. It is, I would say, probably impossible to ever totally eliminate accidents or injuries or property damage or probably even fatalities. Statistically, they are going to happen in any system that is as large as our natural gas and other hazardous material handling systems in this country.

Considering the low level of the numbers and the constancy of the low level of the numbers and the fact that most accidents are caused—the largest cause of incidents, at any rate, is damage by outside forces, I would say you are approaching as good a system as you can get.

Senator DANFORTH. Gentlemen, thank you very much.

Mr. MERRIMAN. I would point out one thing: That in most liquid pipelines even though there is intrastate business moving within those, most of the pipelines are also in interstate. So that in most States the network of interstate pipelines is also carrying the intrastate business, so there is not like two sets of pipelines.

Senator DANFORTH. There is only one set of pipelines?

Mr. MERRIMAN. There may be in some States pipelines that are only engaged in intrastate business, but in all the States in which we operate, we have intrastate business but it goes through the same pipelines as the interstate business, so it is covered by the Federal regulations.

Senator DANFORTH. Do you know whether or not there are exclusively intrastate pipelines?

Mr. MERRIMAN. I am sure there are in other States.

Senator DANFORTH. How about natural gas, Mr. Liebler? Is it all interstate, or are there specific intrastate pipelines?

Mr. LIEBLER. No. All of your local distribution companies—Washington Gas, from whom you probably buy gas, is a local distribution company. They are not interstate. My own company within New York City, Consolidated Edison, Philadelphia Gasworks, any number, in fact probably most of AGA's members are local distribution companies. They are not interstate. And most of our pipeline is in distribution mains.

I think if you broke it down, it is probably about 200,000 miles of interstate transmission lines versus about 800,000 miles of local distribution main.

Senator DANFORTH. Thank you very much.

Next we have a panel on pipeline taxation. Senator Marlow Cook; Mr. George Bobbitt, director of ad valorem taxes, Tenneco; and Mr. Tom Fleming, Fleming-Tegarden Associates.

Marlow, would you like to start?

STATEMENTS OF SEN. MARLOW COOK; GEORGE BOBBITT, DIRECTOR, AD VALOREM TAXES, TENNECO, INC.; AND TOM FLEMING, FLEMING-TEGARDEN ASSOCIATES

Mr. COOK. Thank you, Mr. Chairman.

My name is Marlow Cook. I am appearing before this committee to address a matter of equity in the State taxation of gas pipeline property operating in interstate commerce.

A coalition of 21 gas pipeline companies has formed itself to bring to the attention of Congress a wrong that badly needs to be set right.

There exists in this country a pattern of assessment practices in many States which result in property taxes higher on pipeline property than the proportion of taxes paid by commercial and industrial property owners in the many of the 48 States in which pipelines operate.

At the outset I want to express my concern that certain State legislatures are currently considering or have recently enacted new legislation which will exacerbate the problem and further increase property taxes in a discriminatory way on gas pipeline property.

Recently, one State has passed legislation which would classify utility property at 30 percent of fair market value while setting the percentage at 15 percent for all other property. The effect of this is to tax pipelines 100 percent greater than commercial and industrial property.

Other States have enacted laws setting percentages of assessed value on gas pipeline property from 30 to 67 percent higher than other commercial and industrial properties. Gas pipelines operating in interstate commerce serve consumers in States far beyond its borders. Since the additional taxes are passed on as cost of service to the consumer, the taxing States have effectively exported its tax burden to citizens of other States.

State action in the past to impose excessive taxes on interstate gas pipelines was certain to burden citizens of other States, and it was struck down by the United States Supreme Court in *Maryland* v. *Louisiana* in 1981. The State of Maryland, joined by other States, challenged the constitutionality of the Louisiana first use tax on natural gas processed in Louisiana and sold to out-of-State customers.

In upholding the challenge by the several States against Louisiana, the court stated that the State's right to tax interstate commerce is limited, and no State tax may be sustained unless the tax, among other things, is fairly apportioned and does not discriminate against interstate commerce.

The imposition of a tax on property on a basis often twice as high as other property is an unfair burden on the pipelines. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce and thus on the consumer.

For several years the companies engaged in the transmission of natural gas pipelines have paid property taxes much higher than taxes paid by the owners of other commercial and industrial properties due to inequitable assessment practices

Because of the relative inability to move pipeline property out of a high tax State to a more favorable tax climate, the State assessors have utilized a higher assessment level against pipeline property than other commercial and industrial properties.

Under current Federal law, there is no provision to prohibit such discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural gas pipeline companies currently experience.

Most recently, the Bus Regulatory Reform Act of 1982 amends the Interstate Commerce Act to prohibit discriminatory property tax treatment of all motor carriers, including buses. Formerly this section prohibited such discriminatory tax treatment only of motor carriers of property such as trucks and was enacted under the Motor Carrier Act of 1980.

Also, the Tax Equity and Fiscal Responsibility Act of 1982 protects the airlines from such discriminatory taxes. And prior to the above legislation, the railroad industry under the 4-R Act was given such relief.

Current law should be amended to prohibit discriminatory tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. Prohibition of this discriminatory tax treatment would promote equity and fairnesses between the State property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment.

In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and congressional intent underlying recent legislation prohibiting such discriminatory State tax treatment of airlines, buses, trucks and railroad companies.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF SEN. MARLOW W. COOK

My name is Marlow W. Cook, and I am appearing before this Committee to address a matter of equity in the State taxation of gas pipeline property operating in interstate commerce. A coalition of 21 gas pipeline companies has formed itself to bring to the attention of Congress a wrong that badly needs to be set right. There exists in this country a pattern of assessment practices in many states which result in property taxes higher than the proportion of taxes paid by commercial and industrial property owners in many of the 48 states in which pipelines operate.

At the outset, I want to express my concern that certain state legislatures are currently considering or have recently enacted new legislation which will exacerbate the problem and further increase property taxes in a discriminatory way on pipeline property. Recently one state has passed legislation which would classify utility property at 30% of fair market value while setting the percentage at 15% for all other property. The effect of this is to tax pipelines 100% greater than commercial and industrial property. Other states have enacted laws setting percentages of assessed value on gas pipeline property from 30% to 67% higher than other commercial and industrial property.

Gas pipelines operating in interstate commerce serve consumers in states far beyond its borders. Since the additional taxes are passed on as "cost of service" to the consumer, the taxing states have effectively "exported" its tax burden to citizens of other states.

State action in the past to impose excessive property taxes on interstate gas pipeline threatened to burden citizens of other states was struck down by the U.S. Supreme Court in *Maryland* v. *Louisiana* in 1981. The State of Maryland joined by several other states challenged the constitutionality of the Louisiana "first use" tax on natural gas processed in Louisiana sold to out-of-state customers. In upholding the challenge by the several states against Louisiana, the Court stated that the states right to tax interstate commerce is limited and no state tax may be sustained unless the tax, among other things, is fairly apportioned and does not discriminate against interstate commerce.

The imposition of a tax on property on a basis often twice as high as other property is an unfair burden on the pipelines. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce.

For several years, the companies engaged in the transmission of natural gas by pipeline have paid property taxes much higher than taxes paid by the owners of other commercial and industrial properties due to inequitable assessment practices. Because of the relative inability to move pipeline property out of a "high tax state" to a more favorable tax climate, state assessors have utilized a higher assessment ratio against pipeline property than other commercial and industrial property.

Many states assess the value of property of an interstate natural gas pipeline company in such a manner as to cause such property to bear a disproportionately greater share of the state property tax burden as compared to other commercial or industrial property in the state. The property belonging to an interstate natural gas pipeline company is assessed at a higher value relative to its true market value than other commercial and industrial property for state and local property tax purposes.

Under current federal law, there is no provision to prohibit such discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural pipeline companies currently experience. Most recently, the Bus Regulatory Reform Act of 1982 (Pub. L. No. 97-261) amends the Interstate Commerce Act (49 U.S.C. 11503a) to prohibit discriminatory property tax treatment of all motor carriers, including buses. Formerly this section prohibited such discriminatory tax treatment only of motor carriers of property (such as trucks) and was enacted under the Motor Carrier Act of 1980 (Pub. L. 96-296). Also, the Tax Equity & Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248) protects the airlines from discriminatory taxes.

Prior to the above legislation, the railroad industry sought and received relief from discriminatory state property tax treatment in the Railroad Revitalization and Regulatory Reform Act of 1976, "4-R Act," (Pub. L. No. 94-210).

Current law should be amended to prohibit discriminatory state tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. Prohibition of this discriminatory tax treatment would promote equity and fairness as between the state property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment. In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and Congressional intent underlying recent legislation prohibiting such discriminatory state tax treatment of airlines, buses, trucks and railroad companies.

[The following information was subsequently received for the record:]

Bishop, Liberman, Cook, Purcell & Reynolds,
Washington, D.C., April 24, 1984.

Hon. John C. Danforth,
U.S. Senate, Washington, D.C.

Dear Senator Danforth: During the hearings this morning before the Subcommittee on Surface Transportation of the Senate Committee on Science and Transportation, you raised the juridictional question of why the natural gas pipeline industry has failed to utilize the federal court system to resolve inequitable state tax assessments.

I stated to you that I would prepare a short legal memorandum relative to the problems as regard to jurisdictional strictures presented to the industry as a result of the language of the Tax Injunction Act of 1937, 28 United States Code § 1341. I would appreciate your evaluation of this memorandum and your including it in the record of the hearings in response to your request.

For decades, businesses involved in the interstate transportation of commodities, natural resources, and people have suffered from discriminatory property taxation imposed by states and local governments. In recent years Congress, recognizing both the discriminatory impact of certain states' tax assessment systems and the futility of challenging these systems in state courts, has provided a federal forum to redress the businesses' property tax problems.

A specific establishment of a federal forum was necessary to overcome the jurisdictional strictures of the Tax Injunction Act of 1937, as amended, 28 United States Code § 1341 ("section 1341"). The Tax Injunction Act provides that:

> The [federal] district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The Congress has been fit to temporize section 1341's broad prohibition against interfering with state sovereignty in raising revenues with protection of interstate commerce from blatant abuse of power. Accordingly, Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976[1] ("the 4-R Act") and Section 31(a)(1) of the Motor Carrier Act of 1980[2] effectively abrogate the Tax Injunction Act.

The extensive legislative history of section 306 can be distilled into two salient principles upon which all similar legislation has been developed. First, it is clear that "state tax discrimination against railroad [and other interstate] transportation imposes severe burdens upon the nation's economy and that [interstate carriers] have been unable to obtain relief from such discrimination because of the unwillingness of state administrative and judicial officers to reduce railroad assessments." *Atchison, Topeka and Santa Fe Ry. Co.* v. *Lennon*, 552 F. Supp. 1031, 1036 (D. Kan. 1982). *See* S. Rep. No. 91-630, 91st Cong., 1st Sess. (1969). Resort to the federal courts had been unsuccessful due to section 1341's limitations on federal judicial authority.

Second, federal legislation affording railroads and similarly situated companies access to federal district courts was the only "effective method of obtaining relief from discriminatory state taxation." *Lennon*, 552 F. Supp. at 1036. For example, the Alabama Court of Civil Appeals recently rejected a pipeline company's challenge to discriminatory state property tax classification and assessment. *Alabama* v. *Colonial Pipeline Co.*, ——— So. 2d ——— (Ala. January 25, 1984). The company argued that the state had improperly classified its assets as public utility property. Noting that pipeline companies, unlike railroads, motor carriers, and airlines, had not been given the protection of section 306 or similar statutes, the court held that the state was not precluded from assessing pipelines at a higher ratio than other commercial or industrial property. *Id.* The court stated that congressional protection of the other entities cannot protect the pipeline companies. *Id Colonial Pipeline* demonstrates that the arguments which led to the enactment of section 306 apply with equal force to pipeline companies today.

Only after the passage of section 306 were the railroads able to achieve some relief from discriminatory state taxation. In *Lennon*, eleven interstate railroad companies challenged the State of Kansas' assessment and collection procedures for rail transportation property. The court found section 306 constitutional and refused to abstain from deciding the case Id. at 1037-38. Turning to the substantive issues, the court found that Kansas discriminatorily assessed the railroads' property. Accordingly, the county assessors were permanently enjoined from assessing and taxing the railroads' property at a rate higher than that applicable to similar commercial and industrial property.

In *Tennessee* v. *Louisville & Nashville R.R. Co.*, 478 F. Supp. 199 (M.D. Tenn. 1979), aff'd, 652 F.2d 59 (6th Cir. 1981), cert. denied, 454 U.S. 834 (1981), the court found section 306 constitutional and rejected the state's claim that section 306 was without a rational basis. Tennessee had included railroad property under the general classification "public utility property" and had taxed railroad property at a higher rate than other industrial prroperty. The state maintained that section 306 was intended to prevent discrimination against railroad property "as opposed to all other property." Because "public utility property" included property other than railroad property, the state argued that its statutory scheme was not in violation of section 306, and sought a declaratory judgment that its statute was compatible with the 4-R Act or, alternatively, that section 306 was unconstitutional.

Noting that Tennessee's property classification perpetuated the evil Congress sought to avoid by enacting section 306, the court held that section 306 abrogated the state's classification scheme. The court's holding relied primarily on the legislative history of the 4-R Act Id. at 201-02; see also 121 Cong. Rec. 5-23043 (daily ed. Dec. 19, 1975) Moreover, the court found that section 306 was a valid exercise of Congress' commerce clause powers. "This Court also concludes that Congress' effort to revitalize the railroad industry by implementing the 4-R Act overrides the State's interest in maintaining a property tax classification system . . . ."478 F. Supp. at 206. Accordingly, the court refused to enter a declaratory judgment upholding Tennessee's taxation scheme.[3]

Similary, the court in *Arkansas-Best Freight System, Inc.* v. *Cochran* 546 F. Supp. 904 (M.D. 1984), a decision under an analogous provision in the Motor Carrier Act of 1980, 49 U.S.C. § 11503(a), held that "[t]he state cannot escape the federal prohibition simply by including some additional 'commercial and industrial' property within the 'public utility property' classification . . . ." Id. at 910. The Court also held that neither the commerce clause nor the tenth amendment restricted application of section 306. Id at 910–12.

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[1] 49 U.S.C. § 11053.

[2] 49 U.S.C. § 11503(a).

[3] The court also found that the federal courts' power to grant injunctive relief pursuant to section 306 is not premised on a showing of irreparable harm or inadequacy of legal remedies because Congress has specifically granted such powers to the federal Courts. Id. at 210. The Court did not discuss section 306's affect on section 1341.

Both *Arkansas-Best* and *Louisville & Nashville* illustrate that section 306 and analogous statutes are necessary to protect interstate carriers from discriminatory state property tax assessments and classifications. The Eleventh Circuit Court of Appeals recently clarified the parameters of section 306 of the 4-R Act by holding that section 306 bars abstention in cases alleging either de jure or de facto discrimination against the railroad. In *Southern Ry. Co.* v. *State Bd. of Equalization*, 715 F.2d 522 (11th Cir. 1983) several railroads challenged assessments proposed by the Georgia State Board of Equalization because local non-railroad property was preferentially valued below the amount required by state law. The railroads sought an order from the district court enjoining the issuance of the discriminatory valuations. The district court found that the railroads' suit was without merit because Georgia law required uniform valuations and that abstention was appropriate because federal intervention would disrupt the state's policy of uniform taxation. De facto discrimination was involved because the law was not discriminatory, but the actual valuations discriminated against the railroads.

On appeal, the court noted that the abstention doctrine survived the codification of the Tax Injunction Act, 28 U.S.C. § 1341, and that both the doctrine and section 1341 operated to preclude federal courts from deciding state tax issues. Nevertheless, in enacting section 306 Congress determined that the general policy of federal deference to the state's sovereignty was outweighed by the "disruptive effects of discriminatory state and local taxation of railroad property." Id. at 529. See Rep. No. 630, 91st Cong., 1st Sess. 6–8 (1969); S. Rep. No. 1438, 90th Cong., 2d Sess. 6 (1968). Section 306 specifically exempts railroad taxpayers from the strictures of the Tax Injunction Act and by abstaining the district court frustrated the "jurisdictional grant" of section 306.

The *Southern Ry. Co.* court's broad interpretation of section 306 was necessary to effect the purposes of the 4-R Act. *See, e.g., General American Transportation Corp.* v. *Louisiana Tax Comm'n*, 680 F.2d 400 (5th Cir. 1982); *Louisville & Nashville Ry. Co.* v. *Louisiana Tax Comm'n*, 498 F.Supp. 418 (M.D. La. 1980). Some states have attempted to disguise their taxes and avoid section 306's proscriptions by denominating their tax a "license" tax. Two recent cases have held that section 306 "reaches all [types] of taxes upon railroads." *Kansas City Southern Ry. Co.* v. *McNamara*, 563 F.Supp. 199 (M.D. La. 1983); *see Alabama Great Southern R.R. Co.* v. *Eagerton*, 663 F.2d 1036 (11th Cir. 1981).

The natural gas pipeline companies do not benefit from legislation similar to section 306. Accordingly, they cannot overcome discriminatory property taxation for two reasons. First, section 1341 prevents federal district courts from providing the necessary relief. Second, the states have been unable or unwilling to eliminate their discriminatory taxation schemes. Moreover, the protection provided to other interstate carriers has exacerbated the pipeline companies' plight by forcing the pipeline companies to carry, in effect, the tax burden caused by eliminating discriminatory taxation of the protected carriers.

Finally, it should be noted that a recent Supreme Court case also demonstrates the need for specific federal legislation mandating equality in state property taxation of interstate carriers. In *Fair Assessment In Real Estate Assoc.* v. *McNary*, 454 U.S. 100 (1981), the Court held it proper to abstain from deciding a section 1983, 42 U.S.C. § 1983, damages action based on the alleged impropriety of certain property tax assessments. The Court's holding was founded on the principle of comity which bars federal courts from interfering with the exercise of a state's sovereign power. Significantly, the court did not decide whether section 1341, standing alone, would compel a similar result. By implication, however, the Court has exalted the broad principle of comity over the more specific restraints imposed by Congress in section 1341. Absent a specific congressional grant of jurisdiction, it appears that federal courts could construe the principle of comity to restrain them from hearing challenges to a state's taxation policies. *See Southern Ry. Co.*, 715 F.2d at 529–30 (*Fair Assessment* does not mandate the application of the abstention doctrine in cases involving state taxation of railroad property only because Congress has specifically empowered the federal courts to hear cases under section 306).

CONCLUSION

Given the states' demonstrated reluctance to eliminate discriminatory tax schemes and the absence of specific federal legislation providing a federal cause of action to natural gas pipeline companies, it is evident that natural gas pipeline companies, unprotected by section 306 or analogous statutes, will continue to experience discrimination that severely burdens both the companies and interstate commerce. It is a fundamental precept of our legal system that only Congress has the power to control the jurisdiction of the lower federal courts. *See Fair Assessment,* 454 U.S. at 125 (Brennan, J., concurring). Congressional legislation empowering the federal courts to hear cases alleging discrimination against railroads and other interstate carriers has helped alleviate these businesses' tax problems. Similar legislation is necessary to enable natural gas pipeline companies to avoid the same discriminatory state taxation.

Very truly yours,

MARLOW W. COOK.

Senator DANFORTH. Thank you, sir. Mr. Bobbitt.

Mr. BOBBITT. Mr. Chairman, my name is George Bobbitt and I am speaking as a property tax practitioner on behalf of a coalition of federally regulated interstate gas pipeline companies.

I am director of ad valorem taxes for Tennessee Gas Pipeline Co., which is a major division of Tenneco. I have been involved with property taxes on a full-time basis for the last 30 years. As you can imagine, the effect on property values during this 30-year period of general inflation has been tremendous.

My company has pipeline property in 25 States. While I cannot speak from firsthand experience regarding the other States, I can assure you that the methods and procedures used in assessing pipelines in those 25 States is very typical of all States.

The usual practice in most States is for an agency of the State to assess all property of a particular pipeline within that State. A proportionate amount of that total value is then distributed to each local taxing jurisdiction where the property is actually located. Then the tax rate of that jurisdiction is applied, just as it is to all other property.

Now the method of assessing pipelines is quite different from that of other properties, such as residential, farms, commercial, and industrial property. Pipeline properties are fully assessed each year. In contrast, it is not at all unusual for several years to pass before any attempt is ever made to update the assessments of these other properties.

When market values continue to increase at a steady rate, the gap between assessed values and market values grows wider between pipeline properties and the other properties. Then when the other properties are eventually reassessed on a current market basis, the complaint is frequently heard that the burden is being shifted to these newly reassessed properties.

Now the real truth is that when an honest attempt is made to correct that ever-widening disparity in assessments, the inevitable results simply are politically unpopular. At this point, there is a tendency for local officials to be pressured into finding some way to legalize the past inequitable assessment practices.

I can tell you that this very scenario either has been or is in the process of becoming a reality in the property tax system of several States. And invariably, gas pipelines are always placed at the highest end of the taxation spectrum.

Historically, the foundation of property taxation was based on the premise that a property owner would share in the cost of local services in proportion to the value of his property in relation to the value of the total property in that governmental unit. That foundation now has begun to crumble through the selective granting of exemptions and through the classification of various types of property at differing percentages of market value.

Today's pressures of social reform are fast twisting that original premise of the property tax, which was based purely on cost sharing, into one that is heavily influenced by the ability to pay.

Tax authorities perceive the gas pipeline industry as having deep pockets, and therefore we have been considered fair game for those who are trying to protect both their source of revenue and the other classes of taxpayers. Such practice is unfair to the pipelines, and more importantly in turn, it is unfair to the consumer, who ultimately bears the burden of this additional cost.

This practice existed with the railroads and it was corrected by Congress. This practice existed with the airlines and it was corrected by Congress. This practice also existed with the trucking industry and with the bus lines and it was corrected by Congress.

My purpose in coming here today is to point out this existing unfair practice as it relates to gas pipelines, and to urge Congress to take the necessary action to correct this discrimination, which can only be done through providing access to the Federal district courts. Any relief that might be granted in the way of more equitable taxation would flow directly through to the consumer. The only benefit to our industry comes through a further demonstration of our good faith efforts to halt the rising price of our product.

Mr. Chairman, I appreciate very much this opportunity to appear here today, and would be pleased to respond to any questions.

[The statement follows:]

STATEMENT OF GEORGE F. BOBBITT, DIRECTOR, ASC VALOREM TAXES, TENNECO, INC.

My name is George F. Bobbitt and I am speaking as a property tax practitioner on behalf of a coalition of federally regulated interstate gas pipeline companies.

I am Director of Ad Valorem Taxes for Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., and I have been involved with property taxes on a full time basis for the last 30 years. As you can imagine, the effect on property values during this 30 year period of general inflation has been momentous.

My company has pipeline property in 25 states. While I cannot speak from firsthand experience regarding the other states, I can assure you that the methods and procedures of assessing pipelines in these 25 states are typical of all states.

At the outset I'd like to dispel any possible question that might exist regarding the terms "ad valorem tax" and "property tax." Actually, there is no difference. Either term is proper. "Ad valorem" is Latin in origin and simply means "according to value." And that is the basis of the property tax. Personally, I prefer the more simple term of "property tax."

The usual practice in most states is for an agency of the state to assess all property of a particular pipeline within the state. A proportionate value is then distributed to each local taxing jurisdiction where the property is located. Then the tax rate of that jurisdiction is applied, just as it is to all other property.

The method of assessing pipelines is quite different from that of other property such as residential, farm and commercial and industrial property. Pipeline properties are fully assessed each year. In contrast, it is not at all unusual for several years to pass before any attempt is made to update the assessment of most other properties. As market values continue to increase at a steady rate, the gap between assessed values and market values has grown wider between pipeline properties and other properties. When the other properties are eventually reassessed on a current market basis, the compliant is frequently heard that the tax burden is being shifted to those reassessed properties. The truth is that when an honest attempt is made to correct that ever-widening disparity in assessments, the inevitable results are politically unpopular.

At this point, there is a tendency for local officials to be pressured into finding a way to legalize the past inequitable assessment practices. This very scenario either has been or is in the process of becoming a reality in the property tax system of several states. Invariably, gas pipelines are always placed at the highest end of the taxation spectrum.

Historically, the foundation of property taxation was based on the premise that a property owner would share in the cost of local services in proportion to the value of his property in relation to the value of the total property in that governmental unit. That foundation now has begun to crumble through the selective granting of exemptions and through the classification of various types of property at differing percentages of market value. Today's pressures of social reform are fast twisting the original premise of the property tax which was based on cost sharing into one that is heavily influenced by the ability to pay.

Tax authorities perceive the gas pipeline industry as having "deep pockets" and, therefore, we have been considered "fair game" for those who are trying to protect both their source of revenue and the other classes of taxpayers. Such practice is unfair to the pipelines and to the consumer who bears the burden of this additional cost. This practice existed with the railroads and was corrected by Congress; this practice existed with the airlines and was corrected by Congress; this practice existed with the trucking industry and was corrected by Congress. This practice exists with the pipeline companies and should be corrected by Congress.

Any relief that might be granted in the way of more equitable taxation would flow directly through to the consumer. The only benefit to our industry comes through a demonstration of our continued good faith efforts to halt the rising price of our product.

Senator **DANFORTH**. Thank you. Mr. Fleming.

Mr. **FLEMING**. Thank you, Mr. Chairman. My name is Tom Fleming and I am pinch-hitting today for Mr. Robert H. McSwain, who has filed a statement with you for the record. Mr. McSwain became ill last week and is unable to be here.

By way of introduction, Mr. McSwain is the former administrator of pipeline and utility assessments for the State of Alabama. Mr. McSwain retired from the State of Alabama after 30 years of service, and is widely recognized as one of the foremost administrators of utility appraisers in the country. The statement he has filed with you reflects his concern about this very important matter of tax discrimination.

For 16 years, until I entered private appraisal and consulting business in January 1983, I was the administrator of utility and railroad assessments for the State of Tennessee. Like Mr. McSwain, I am a former president of the International Association of Assessing Officers. As an administrator and president of the IAAO, I had the opportunity to visit many of the States and see firsthand the quality of assessment administration and practices in this country. My purpose for being here today is to talk about property tax discrimination as it relates to interstate natural gas pipeline companies.

Interstate natural gas pipeline companies are the object of higher levels of taxation as a result of discriminatory practices throughout the country. Natural gas pipeline companies are easy prey for such tax discrimination because the majority of their properties are fixed and located below ground and cannot be abandoned without Federal approval.

Tax discrimination of natural gas pipeline companies usually comes in two forms. The first form of tax discrimination is found in administrative practices of assessing interstate natural gas pipelines at higher levels of value than other commercial and industrial properties.

You might ask yourselves, how can this happen, as most laws throughout the country are uniform and require property to be valued at market value? However, in practice, what actually takes place is that natural gas pipeline companies are valued at market value or more each year, while other properties are assessed as infrequently as every 5 to 10 years in some jurisdictions. Frequently what happens in cases like this, the administrator gives no relief, forcing the company to appeal to boards or tax commissions that have turned a deaf ear to their appeal, thereby forcing the company to take the matter to State courts, where they have received little or no relief.

In addition to the examples given by Mr. McSwain in his paper, my home State of Tennessee is another example where for 15 years the State courts told the railroads that their only avenue for tax relief was to bring all other property values up to their level of value, which by law was required to be 100 percent market value.

It was not until the railroads got Federal legislation in the form of the 4-R Act that they got any substantial relief from property tax discrimination.

The second type of tax discrimination comes in the form of State laws that assess pipelines at a higher level of value than other commercial and industrial properties. This form of discrimination is known as classification of property. Under every classification system that I know of, interstate pipelines are classed at the highest level.

Tennessee is an example of a classification State, assessing pipelines at 55 percent of value, which is 37.5 percent higher than other commercial and industrial properties. The interesting thing about Tennessee is that classification of property didn't come about until railroads had litigated in the courts to receive discriminatory tax relief. What did Tennessee do? They changed the law so as to make the already existing discrimination legal.

You will find this type of pattern all across the country. Administrative discrimination exists first, and after extended litigation with limited success, the States then change the law to make the past discrimination practices legal.

After years of discrimination, the railroads were only able to obtain relief after Federal legislation in the form of the 4-R Act was passed. This act prohibits discrimination against transportation properties by providing a remedy in Federal court. Subsequent Federal legislation provided relief for trucking, airlines, and bus companies.

The interstate natural gas pipeline industry finds themselves in a similar predicament to the other forms of interstate transportation companies, which have benefited from Federal legislation which has remedied tax discrimination. Under current law, there is no provision to prohibit such discriminatory treatment for tax properties belonging to interstate natural gas pipeline companies.

And finally, Mr. Chairman, Federal legislation to provide access to Federal district courts to correct this discrimination is imperative. Thank you.

[The statement follows.]

Statement of Robert H. McSwain, MAI, SRPA, CAE

The interstate natural gas pipeline industry finds themselves in the same position as the nation's railroads were before passage of Public Law 94-210 (1976). The, too, suffered from discriminatory tax treatment. This discriminatory tax treatment costs the interstate natural gas pipelines many millions of dollars which are included in the cost of service. This increase in the cost of service is paid by the ultimate consumer.

Discriminatory tax treatment can take several forms, such as:

1. Legal Classification.
2. De Facto Classification.
3. Improper Valuation and Allocation.
4. Ineffective State Court Remedies.

I would like to discuss briefly each of the four forms of discriminatory tax treatments practiced against interstate natural gas pipelines.

1. Legal Classification—Some states when faced with court suits over constitutional provisions which provided for equalization merely amended their constitutions to provide for a classified property tax system, and thereby, place the interstate natural gas pipeline in the highest classification.

The states with classified property tax systems are:

Alabama: Utilities, 30% of market value. Commercial and Industrial, 20% of market value. The natural gas pipeline ratio is 50% higher than commercial and industrial.

Arizona: Utilities, 38% of market value. Commercial and Industrial, 25% of market value. The natural gas pipeline ratio is 52% higher than commercial and industrial.

Louisiana: Utilities, 25% of market value. Commercial and Industrial, 15% of market value. The natural gas pipeline ratio is 66⅔% higher than commercial and industrial.

Mississippi: Utilities, 30% of market value. Commercial and Industrial, 15% of market value. The natural gas pipeline ratio is 100% higher than commercial and industrial.

Montana: Utilities, 13% of market value. Commercial and Industrial, 10% of market value. The natural gas pipeline ratio is 30% higher than commercial and industrial.

Tennessee: Utilities, 55% of market value. Commercial and Industrial, 40% of market value. The natural gas pipeline ratio is 37½% higher than commercial and industrial.

2. "De Facto" Classification—Even though their constitutions provide for equal assessment, some states practice de facto classification. The disparity in assessment ratio is reflected in the level of assessment used by the state and those reflected by ratio studies made by the railroads. Some of the states where law suits are pending where discrimination against pipeline is at issue are:

Ratio	Percent natural gas pipeline higher than average
Arkansas	Assessment Level 20 percent, Ratio Study 12 percent, 66 percent.
Colorado	Assessment Level 30 percent, Ratio Study 11 percent, 172 percent.
Utah	Assessment Level 20 percent, Ratio Study 10.2 percent, 96 percent.

Without the protection of Federal legislation, a natural gas pipeline fights an unwinable battle when it attacks discrimination. As soon as the court declares the discriminatory taxation illegal, the state takes steps to legalize what it was going illegally.

When the Federal Court in the early 1980s rules that Alabama's property tax system violated the Federal Constitution, the Governor called the State Legislature into Special Session and passed a constitutional amendment to legalize what the Federal Court had declared illegal. The constitutional amendment was sold to the people by a large media effort largely supported by the Farm Bureau with the motto "Vote Yes—Pay Less." The amendment placed a property tax burden on pipelines of triples that on rural and residential and 50% greater than on industrial property. Currently, the Alabama Legislature has pending legislation to increase this awesome disparity.

3. Improper Valuation and Allocation—Many times unfair and unreasonable taxation is accomplished through unsupportable or unacceptable valuation methods or allocation of the value to a taxing jurisdiction. Even though the law of the jurisdiction specifies that the property tax is to be based on "market value," values are frequently adjusted to meet revenue requirements.

4. Ineffective State Court Remedies—It would seem that many of the problems mentioned above could be resolved in state courts. The railroads had limited success in litigation prior to obtaining access to the Federal courts. Since enactment of Federal law prohibiting discrimination in the state taxation of railroad property, the railroads have achieved a substantial degree of success in correcting these inequities.

Litigation to achieve fairness for pipelines in state courts would be extremely expensive, time-consuming, and fruitless in view of the railroad industry experience. Ultimately, discriminatory taxes add to the cost of service which is paid by the consumer. Administrative proceedings on property tax assessments are so structured that it is almost impossible for a natural gas pipeline to gain relief. The original administrative appeal board in some states is closely associated with the assessing body. Appeal to the courts is from the administrative body, but grounds for appeal are so narrow and the opinions of the administrative board are written in such a way as make it extremely difficult to gain equitable treatment.

CONCLUSION

Discriminatory taxation of natural gas pipelines takes many forms, but the net result is that it increases the cost of natural gas to the consumer. The passage of a public law providing for fair and equal taxation of natural gas pipelines is in the public interest.

Senator **Danforth**. What does this mean to the people in Missouri?

Mr. **Bobbitt**. Missouri is not one of the States where we have property, so I am not firsthand familiar.

Senator **Danforth**. Well, just pick any State. I mean you are coming to Congress and you are saying,

> Look, you have big budget issues on the floor or you have whether or not we are going to be aiding El Salvador and all kinds of issues that are coming to the floor of the Congress; and by the way, while you are dealing with everything else, please have mercy on these poor little pipeline companies that are being treated unfairly.

The question that various members of the Commerce Committee would like to ask is how does this affect our constituents, if it does?

Mr. **Cook**. Mr. Chairman, let me give you an example. I don't think I can pick up Missouri, but let me give you an example of a proposal that has been floated around that is now under consideration in one particular State.

If it were to go through as it presently is, and that would be with 100 percent valuation at a 70 mil rate, in relation to the present taxes that the 21 pipelines that are here before you today now pay and what they would pay if this went into effect, would be an increase to the consumers in the respective States that it services by $266 million a year.

Now you also have to understand that many of these States are as many as 8 or 10 or 11 States away from either a coastal State, a gulf coast State, and consequently this is a method that is available to every State in the interim. So you could take each one of these States and you could impose such a situation; that is, letting somebody else outside of your own State pay for the sources of your general fund revenue. And consequently, that $266 million to the consumers could balloon and balloon and balloon.

Senator **Danforth**. You are saying that States are looking for additional sources of revenue, and this looks like an additional source of revenue that will be increasingly popular, and the effect of raising revenue this way is to increase the cost of natural gas to the consumers?

Mr. Cook. I would answer yes in all respects except for one thing, and that is that those groups that they must utilize this form of taxation on are groups that fall within Federal control, Federal rates, and Federal authority to pass the cost of service through to the consumer.

Now if you go beyond that, then you are imposing a tax which directly affects your own jurisdiction, and we have seen those situations that go on all across the country.

But when you take a situation and impose a tax so that it is a flowthrough, in effect, then the people of your own State are not assessed that tax and people in the Northeast, people in the Southeast or wherever the case may be, are paying a great deal of tax into your coffers which they don't have a right to vote on one way or the other, but they certainly are assessed and for which they get no benefit.

Senator Danforth. This is exclusively a tax on people in other States?

Mr. Cook. Well of course, the example in *Maryland* v. *Louisiana* was exactly that, Mr. Chairman. And in that instance, there was an absolute prohibition against the first use tax being imposed on intrastate gas lines. It was totally imposed on interstate gas lines, and thus the Supreme Court came down on the side of its failure to provide uniformity in the tax.

The next case that came along, as you are familiar with, was *Consolidated Edison* v. *Montana,* where they imposed a severance tax. However, for the benefit of Montana they realized that all the coal that was coming out of southeastern Montana was being shipped directly out of the State, so they imposed a 30-percent severance tax with the knowledge that they were using none of that coal within the State of Montana, and it passed that test in the Supreme Court, Mr. Chairman. They said that it was uniform. Although other States are shipping into Montana at a lower severance tax rate, Montana is shipping out at a 30-percent rate.

So what we are seeing now is an effort to establish comity, if you will. That is that they are finding a way around it which is more degrading to the rest of the States, and that is saying, for instance, that if we assess all pipelines at 100 percent of value at an extremely high rate, then if you will put more money into your facility here in the State or if you will hire more people here in the State, or if you will move facilities from other States such as Missouri to here, then we will reduce your State income tax.

Now we don't know whether that will pass the test.

Senator Danforth. Is this speculative or has this been done?

Mr. Cook. This is not speculative but it is in the process of being implemented.

Senator Danforth. You mean there are various States that are now enacting laws which provide rebates?

Mr. Cook. They are in the process of discussing those situations, yes, Mr. Chairman, because that is the only way that they really can get around *Maryland* v. *Louisiana* at this stage of the game.

There is a proposal now that——

Senator DANFORTH. We are talking about rebates to what kind of company? Anybody who uses natural gas?

Mr. COOK. Let's say anybody that is in the pipeline business or that is in the petroleum or gas business, but then if you are a conglomerate, that means a rebate for anything. You know, if you are a pipeline company coming through the State of Missouri and you get assessed at 100 percent with a very high millage rate and you want to pay it but you want to reduce it and you own an ice cream factory, I guess if you moved it into the State of Missouri, it would reduce the amount under the comity provisions that they are now talking in terms of within the legal fraternity, it would reduce your State corporate income tax as a result of improving your financial position or employee position in a State. It is kind of like recreating the Civil War, only it is State by State instead of North versus South.

Senator DANFORTH. Now why do you need legislation? Why can't this be handled in the courts?

Mr. COOK. Well, in the first place, at this stage of the game, we are really subject to the jurisdiction of State courts, and I would hope if anybody wants to speak up, please, because I don't really want to take all this time.

Senator DANFORTH. It is not a Federal issue if you raise the question of discriminatory taxation?

Mr. COOK. It is not.

Senator DANFORTH. On an instrument of interstate commerce? That is not a Federal issue?

Mr. COOK. It has not been ruled a Federal issue up until this point.

Mr. BOBBITT. May I say that the problem has existed for some time, and efforts have been made in the State courts. What we need is access to the Federal courts.

Senator DANFORTH. Don't you have that access?

Mr. BOBBITT. We do not.

Senator DANFORTH. Why not? Isn't it a Federal issue with the requisite jurisdiction?

Mr. BOBBITT. I am not an attorney but my understanding is that as long as there is a remedy available in State court, the Federal courts will not touch the issue.

Now the emphasis was made here that legislation has been passed that provides access to Federal courts for the railroads, the buslines, the airlines, et cetera. This is all we are asking, is to have the access.

Senator DANFORTH. It has been a while since I practiced law. I didn't think that the Congress grants jurisdiction. I thought that jurisdiction was a constitutional matter and Congress can pare down that jurisdiction, such as by requiring jurisdictional amounts of money to be involved in the controversy. Maybe there is some reason why this is a Federal issue. I don't understand it.

Mr. FLEMING. Mr. Chairman, as I stated in my remarks, Tennessee is an example of where whenever the railroads would go to Federal court, they would point and say your remedy is in State court. The State court in Tennessee, for 15 years, told the railroads, your remedy is to bring everybody else up to your value, your level of value.

Well, that was no remedy at all. After 15 years, the same discrimination existed in the same county. In fact, they were able to show the discrimination was even greater after 15 years of the Federal court——

Mr. **Cook**. I think, Mr. Chairman, to cut across this, we will provide a very short brief to show you the jurisdiction question and we will get it into this record before these hearings are concluded or the record is closed.

I think you are going to find that State tax matters are not a subject of Federal jurisdiction, and that what you really find is that you have a situation where you really would rely on the commerce clause. But in this instance, if there is any attempt to make it uniform on intra and interstate property you can still have an extremely high tax rate and a high ad valorem rate on a particular element, such as pipelines, and it still would be ruled a constitutional question.

So the point I would really like to make is that we are not talking about whether it is uniform on an intra-or interstate basis. We are saying that what we want is we want the same assessed value and we want the same rate as anybody else in the State who falls in the same category of property as ours. That would resolve our problem. Otherwise, our entire fight really is going to find itself in State court and not in Federal court.

I have been given a section of the United States Code, but I would really like to take a look at it and get it into the record so that I can be a great deal more firm about it when we present it to you.

Senator **Danforth**. Ok. Gentlemen, thank you very much.

Next we have a panel on hazardous materials transportation. Clifford Harvison, National Tank Truck Carriers; Daniel Myers, government relations and general counsel, National LP-Gas Association; Andy Doyle, Hazardous Materials Advisory Council; and Fred Millar, Environmental Policy Institute.

Mr. Harvison.

Mr. **Myers**. Mr. Harvison has kindly deferred to me, Mr. Chairman.

Senator **Danforth**. All right, Mr. Myers.

STATEMENTS OF CLIFFORD J. HARVISON, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.; DANIEL N. MYERS, VICE PRESIDENT, GOVERNMENT RELATIONS AND GENERAL COUNSEL, NATIONAL LP-GAS ASSOCIATION; ANDY DOYLE, MEMBER, BOARD OF DIRECTORS, HAZARDOUS MATERIALS ADVISORY COUNCIL; AND DR. FRED MILLAR, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY INSTITUTE

Mr. **Myers**. My name is Daniel Myers. I am the vice president and general counsel of the National LP-Gas Association. However, I am here this morning to speak to you as a representative of the Hazardous Materials Transportation Coalition, and not as a representative of the National LP-Gas Association.

The coaltion was initially organized by the Hazardous Materials Advisory Council, and includes the following organizations: The American Petroleum Institute, the American Trucking Associations, the Chemical Manufacturers Association, National Agricultural Chemicals Association, National Association of Counties, National Association of Towns and Townships, National Conference of State Legislatures, the National Industrial Transportation League, the National League of Cities, the National LP-Gas Association, National Paint and Coatings Association, the National Tank Truck Carriers, Synthetic Organic Chemical Manufacturers Association and the U.S. Conference of Mayors.

While all members of the coalition do not agree with every section of our draft bill, there exists a consensus that the proposal represents a first step toward workable solutions to several difficult problems.

Our coalition began over 2 years ago. The stalemate over the reauthorization of the HMTA in late 1981 was the genesis for the formation of the coalition.

As a foundation, there was agreement that the hazardous materials transportation system would be safer and more efficient with greater uniformity. Likewise, there was general agreement that industry should play a role in assuring a much better State and local capacity in enforcement and emergency response.

Working from these principles, our coalition developed a consensus in five concept areas. First, uniformity. There must be a uniform Federal-State-local regulatory scheme for the transportation of hazardous materials. Technical areas, such as container and tank construction, should be left to the province of the Federal Government for regulation promulgation. Uniquely local situations, such as time of day restrictions, bans, routing and notification, are areas of concurrent jurisdiction. They should be addressed through the use of public-private sector task forces, based on criteria specified by law, and using guidance documents promulgated by the U.S. Department of Transportation.

Second, enforcement. Enforcement of tank and container construction standards should be the province of the Federal Government. Enforcement of all other Federal hazardous materials regulations should be shared by the Federal Government and State and local authorities.

Third, emergency response. State and local fire and police and emergency personnel should act in cooperation and consultation with Federal officials and industry personnel who can lend significant expertise and talent in emergency situations. As an aside, I would also say that the coalition supports the efforts under way in many State legislatures to adopt Good Samaritan legislation. Since 1978, 26 States have passed such hazardous materials Good Samaritan legislation, and bills are now pending in 12 other States.

Fourth, financing. We have proposed an emergency response trust fund, constructed with fees assessed on shippers and carriers of hazardous materials, as well as the manufacturers of hazardous materials containers, which would be used for training and/or equipping State and local emergency response personnel. Participating State and local governments would be precluded from levying a State or local hazardous material fee.

In the area of enforcement, the coalition recommends that Highway Trust Fund moneys be made available to the States through the section 402 procedures of the Surface Transportation Assistance Act.

Fifth, training. The coalition supports the establishment of quality assurance procedures by which all training programs may be evaluated.

A draft of the coalition's proposed legislative amendments has been previously delivered to you. We commend our proposal to your committee's consideration, not as a cure-all, but as a starting point which represents the disparate but shared views of many of the major constituents involved in hazardous materials transportation.

We understand that individual members of the coalition will be submitting their separate statements for the record. We believe that our proposals represent a workable compromise which recognizes the competing interests and molds those interests into a workable framework for an industry-government partnership dedicated to the safe transportation of hazardous materials.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF DANIEL N. MYERS, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL LP-GAS ASSOCIATION ON BEHALF OF HAZARDOUS MATERIALS TRANSPORTATION COALITION

My name is Daniel N. Myers and I am Vice President, Government Relations, and General Counsel of the National LP-Gas Association, the national trade association of the PL-gas (propane) industry. My appearance here today is not as a spokesman for the National LP-Gas Association but as a representative of the Hazardous Materials Transportation Coalition.

The Coalition was initially organized by the Hazardous Materials Advisory Council and includes the following organizations: American Petroleum Institute, American Trucking Associations, Chemical Manufacturers Association, National Agricultural Chemicals Association, National Association of Counties, National Association of Towns and Townships, National Conference of State Legislatures, the National Industrial Transportation League, National League of Cities, National LP-Gas Association, National Paint & Coatings Association, National Tank Truck Carriers, Synthetic Organic Chemical Manufacturers Association, and U.S. Conference of Mayors. While all members of the Coalition do not agree with every section of our draft bill, there exists a consensus that the proposal represents a first step toward workable solutions to several difficult problems.

Our Coalition began over two years ago when frustrations at growing state and local impediments to the transprotation of hazardous materials led to consideration of the concept of a broad federal preemption of state and local government attempts to regulate the commerce of these materials through their jurisdictions.

This effort was considered at a time of uncertainty. In the Spring of 1981, the Administration called for a federal-state-local partnership to assure the most efficient and effective implementation of economic recovery and public safety. The U.S. Department of Transportation (DOT) was proposing to assume a leadership role in encouraging more uniform standards and assisting states and local governments in enforcement and emergency response efforts.

Yet, rather than assuming the lead role, the Department experienced severe reductions in its budget. It became increasingly clear with its present personnel levels, the Department could never implement such ambitious goals.

There was a growing perception that the Department was unable to carry out its leadership role as contemplated by the Congress. With over 720 billion ton-miles of hazardous materials shipped annually, much of it over badly deteriorating highways, the Coalition participants believed it critical that an effective program be in place.

Indeed, it was in this perceived absence of a strong federal role that towns, townships, cities, counties, and states took action to address the mounting fears of their constituencies. They believed that without effective federal enforcement, the surest path to human health and safety was simply to deter any commerce of hazardous materials within their jurisdictions.

A stalemate over the reauthorization of the HMTA in late 1981 was the genesis of the formation of the Coalition. In the early discussions of the public and private sector representatives, two mutual problems became apparent: First, the situation confronting each of us was unlikely to change until we agreed upon such a change; and, second, we, in fact, shared a number of perceptions and goals with regard to improving the current system. As a foundation, there was agreement that the hazardous materials transportation system would be safer and more efficient with greater uniformity. Likewise, there was general agreement that industry should play a role in assuring a much better state and local capacity in enforcement and emergency response.

Our first action as a Coalition was to preserve the existing federal role. On May 18, 1982, the Coalition met with former DOT Secretary Drew Lewis to seek a reversal of proposed reductions in the budget for the Research and Special Programs Administration (RSPA).

At that meeting, the Coalition sought the support of the Administration for our unique efforts. We requested full funding for RSPA while we worked out recommendations for proposed new enforcement and emergency response programs which would not be funded from general revenues. We promised to work toward the goals and objectives of a federal-state-local partnership. With assistance from Capitol Hill, we were successful: the proposed cuts in RSPA's budget were deleted and the Department has maintained a continuing interest in our efforts.

Our next major undertaking was to establish subcommittees which could explore the hazardous materials problems of greatest concern and identify initial solutions. The subcommittees established were: Uniformity, Finance, Education and Training, and Emergency Response. The subcommittees developed draft concept papers which were hammered out in the Coalition's regular meetings.

The Coalition then held a conference in September 1982 involving a broad spectrum of our principals. The intent was to determine if our emerging ideas were acceptable and whether we had a mandate to continue. The conference was a success and it appeared that the Coalition's ideas and suggestions had widespread support.

Translating the work of our Subcommittees and the results of the Denver Conference of September 1982 into legislative language has not been easy. Before going directly to legislation, we developed a consensus on the following concept areas:

1. Uniformity—There must be a uniform federal-State-local regulatory scheme for the transportation of hazardous materials. Matters pertaining to "technical" areas such as container and tank construction, vehicle placarding, package marking and labeling, shipping papers, and hazardous materials definitions should be left to the province of the federal government for regulation promulgation. Uniquely local situations which require a state or local regulatory approach such as time-of-day restrictions, bans, routing, and notification are areas of concurrent jurisdiction. They should be addressed through the use of public-private sector task forces by state and local governments based on criteria specified by law and using guidance documents promulgated by DOT so as to ensure that they do not impact adversely on the citizens of other jurisdictions or unnecessarily burden interstate commerce.
2. Enforcement—The enforcement of tank and container construction standards should be the province of the federal government. Enforcement of all other federal hazardous materials regulations should be shared by the federal government and state and local authorities.
3. Emergency Response—The Coalition recognizes the need for strong coordination and total involvement of all parties in emergency response. Thus, although state and local fire, police, and emergency personnel are generally the first on the scene, they should act in cooperation and consultation with federal officials and industry personnel who can lend significant expertise and talent in emergency situations. I should also add parenthetically that the Coalition supports the efforts underway in many state legislatures to enact "Good Samaritan" legislation designed to protect from liability volunteer third party industry reponders who assist fire and police at the scene of an emergency. Since 1978, 26 states have enacted some form of Good Samaritan legislation covering members of the hazardous materials industry, and bills are now pending in 12 other states.
4. Financing—All of the above requires money and we all recognize that this is potentially the most controversial part of any proposal. A majority of the Coalition is in agreement with the commitment we made to former Secretary Lewis that general revenues would not be tapped, but that a stable and reliable source of funds outside the appropriations process would be found. Thus, we have proposed an Emergency Response Trust Fund, constructed with fees assessed on shippers and carriers of hazardous materials and the manufacturers of hazardous materials containers, which would be used for training and/or equipping state and local emergen-

cy response personnel. Participating state and local governments would be precluded from levying a state or local hazardous material fee. In the area of enforcement, the Coalition recommends that Highway Trust Fund monies be made available to the states through the Section 402 procedures of the Surface Transportation Assistance Act to finance hazardous materials highway enforcement programs.

5. Training—Finally, the Coalition supports the establishment of quality assurance procedures by which all training programs may be evaluated. It is proposed that the Secretary direct the establishment of a certification procedure and enter into arrangements with non-federal entities to administer this program. This certification program could also serve to attract the investment of private capital in training facilities.

A draft of the Coalition's proposed legislative amendments together with summary descriptions of our proposals have been previously delivered to you, members of your Committee, and your staff. We commend our proposal to your Committee's consideration, not as a cure-all but as a starting point which represents the disparate but shared views of many of the major constituents involved in hazardous materials transportation. We understand that individual members of the Coalition will be submitting their separate statements for the record.

We believe that our proposals represent a workable compromise which recognizes the competing interests and molds those interests into a workable framework for an industry-government partnership dedicated to the safe transportation of hazardous materials.

Thank you again for the opportunity to present this testimony. I would be happy to respond to your questions.

Senator DANFORTH. Thank you. Mr. Harvison.

Mr. HARVISON. Thank you, Senator Danforth.

My name is Cliff Harvison and I am managing director of National Tank Truck Carriers, Inc., a trade association of over 200 for-hire tank truck carriers, obviously extensively involved in the transportation of hazardous materials.

Like Mr. Myers, I am pleased to appear here today in support of the objectives and concepts outlined by the members of the Hazardous Materials Transportation Coalition, and urge that positive consideration be given to blending those objectives and concepts as amendments to the Hazardous Materials Transportation Act of 1974.

Paraphrasing my written testimony, it is quite obvious that the increased presence of hazardous materials throughout our lifestyle has brought about certain political as well as transportation problems. As a representative of the motor carrier community, specifically tank truck carriers, we believe that we have had an admirable safety record up to and inclusive of this point.

Our association, National Tank Truck Carriers, believes that the coalition proposal, holds the best opportunity for success in building consensus in three broad areas. First, the promotion of needed uniformity in the technical aspects of hazardous materials regulation. Two, the creation of a legislatively sanctioned format for resolving disputes in the application of the nontechnical side of regulation, without constantly pounding on the courthouse door; and three, the formulation of a method of communicating to State and local governments necessary information and funds so that emergency response techniques might be coordinated and fortified. Allow me to briefly elaborate on each.

There are certain aspects of regulation which must be uniform and immune from alteration by State and local government unless accomplished by Federal rulemaking. Such items as vehicle marking, container construction, and the paperwork that accompanies shipments and commodity classification must be uniform.

Since the mere exercise of regulation is meaningless without enforcement, the sheer volume of hazardous material shipments also dictates the reality that State and local governments should be vested with prime operational enforcement responsibility. State and local officials know their turf, and once effectively trained in a set of uniform Federal regulations, would be better positioned to enforce. My association supports the use of Highway Trust Fund money to implement training and enforcement programs. The Congress has initiated this in section 402 of the Surface Transportation Assistance Act, and we urge its upgrading.

With regard to the nontechnical aspects of regulation, such as routing, time of day restrictions, notification of shipments, we support the concept of federally developed performance standards and/or the use of local task forces involving industry to assure that local concerns and the need for continuity in transportation are balanced. This must be accomplished to avoid ill-considered unilateral actions by one jurisdiction which are imposed without regard to the impact on the citizens of neighboring jurisdictions, the carriers and the public we serve.

For example, the city of New York's enforcement of a system of outright bans, routing and curfew requirements, as well as permits, creates dislocation and imbalances. Without elaborating on the details of that system, suffice it to say that the rules, combined with the city's core position in the Northeast transportation corridor, have had the net effect of the New York City Council imposing burdens on the States of New Jersey and Connecticut and scores of other New York State communities without their knowledge or acquiescence.

Such unilateral actions do little more than place an unfair and disproportionate share of the hazardous materials transportation on the backs of those who may least be prepared to cope with emergencies, and such actions can and do lead to retaliatory actions by adjoining communities and help foster illegal operations within the trucking industry itself.

In this context, the coalition's proposal would allow State and local governments a direct role in the regulatory process, particularly in the sensitive areas of routing and notification, without doing violence to regulatory uniformity and the need for safe, continuous movement of the transportation of hazardous materials.

Under the proposed amendment, concurrent jurisdiction for local routing and notification plans would be both permitted and encouraged. The U.S. Department of Transportation would be asked to develop nonbinding guidance documents to assist local communities, and the use of industry-government task forces should expedite problem solving.

Mr. Chairman, the for-hire tank truck industry recognizes that regardless of regulatory uniformity and cooperation, accidents will happen, and that the preponderate burden for emergency response will fall on State and local governments. Therefore, we support the emergency trust fund that has been proposed as part of the coalition package, and support the concept of uniform and proper fees placed upon industry to support this program.

Lastly, I stress that the present Hazardous Materials Transportation Act must be amended to accomplish these purposes. As one who has paid more than his share of dues in legal fees and expenses in considerable litigation before the Federal courts, I doubt that you could find any two members of the entire judiciary who could or would agree on either the direction or implementation of congressional intent espoused in the 1974 legislation.

Unlike the HMTA of 1974, the coalition has come to you with a proposed system, not just a series or related amendments. We urge enactment of the coalition's concepts and objectives, and I thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF CLIFFORD J. HARVISON, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. Chairman and members of the Committee, my name is Clifford Harvison and I am Managing Director of National Tank Truck Carriers, Inc.—a trade association of over 200 companies specializing in the for-hire tank truck transportation of bulk commodities throughout the 48 Continental United States. As bulk carriers we are extensively involved in the transportation of hazardous materials.

I am pleased to appear, today, in support of the objectives and concepts outlined by the members fof the Hazardous Materials Transportation Coalition and urge that positive consideration be given to blending those objectivies and concepts as amendments to the Hazardous Materials Transportation Act of 1974.

As you well recognize the presence of Hazardous materials throughout our lifestyle is gaining increased public scrutiny and it is only natural that regulatory entities—at all levels of government—focus on the transportation segment of the hazardous materials chain. For it is only in transportation that large quantities of these materials are placed into the public domain.

As a representative of the carrier community, I submit that our record of performance is outstanding. The tank truck industry, alone, makes over 100,000 hazardous materials deliveries on an average business day, and product-release incidents are rare and usually uneventful. However, I also submit that, statistics aside, increased public concern requires a reshaping and redefinition of the roles of the legislator and regulator. Such have been the Coalition's concerns.

Our Association believes that the Coalition holds the best opportunity for success in building concensus in three broad areas: (1) the promotion of needed uniformity in the technical aspects of hazardous materials regulation; (2) the creation of a legislatively sanctioned format for resolving disputes in application of the non-technical side of regulation (without constantly pounding on the Courthouse door); and (3) the formulation of a method of communicating to State and local governments necessary information and funds so that emergency response techniques might be coordinated and fortified.

Allow me to briefly elaborate on each.

There are certain aspects of regulation which must be uniform and immune from alteration by State and local government (unless accomplished by Federal rulemaking). Such items as vehicle marking, container construction and the paperwork that accompanies shipments, and commodity classification must be uniform.

Since the mere exercise of regulation is meaningless without enforcement, the sheer volume of hazardous materials shipments also dictates the reality that State and local governments should be vested with prime operational enforcement responsibility.

State and local officials "know their turf" and once effectively trained in a set of uniform regulations would be better positioned to enforce. NTTC supports the use of Highway Trust Fund monies to implement training and enformcement programs. The Congress has already initiated such a program through Section 402 of the Surface Transportation Assistance Act of 1982; and the Coalition's proposed amendments would supplement this program.

With regard to the non-technical aspects of regulation, such as routing, time-of-day restrictions, notification of shipments, we support the concept of Federally developed performance standards and/or the use of task forces to assure that local concerns and the need for continuity in transportation are balanced. This must be accomplished to avoid ill-considered unilateral actions by one jurisdiction which are imposed without regard to the impact on the citizens of neighboring jurisdictions, the carriers or the public we serve.

For example, the City of New York's enforcement of a system of outright bans, routing, curfews and permits creates dislocations and imbalances. Without elaborating on the details of the City's actions, suffice to say that those rules—combined with the City's core position in the Northeast transportation corridor—have had the net effect of the New York City Council imposing burdens on the States of New Jersey and Connecticut and scores of other New York State communities without their knowledge or acquiescence.

Such unilateral actions do little more than place an unfair and disproportionate share of hazardous materials transportation on the backs of those who may be least prepared to cope with emergencies. Such actions can and do lead to retaliatory actions by adjoining communities and help foster illegal operations within the trucking industry itself.

In this context, the Coalition's proposals would allow State and local governments a direct role in the regulatory process—particularly in the sensitive areas of routing and notification, without doing violence to regulatory uniformity and the need for the safe continuous transportation of hazardous materials.

Under the proposed amendments, "concurrent jurisdiction" for local routing and notification plans would be both permitted and encouraged. The U.S. Department of Transportation would be asked to develop non-binding guidance documents to assist local communities; and the use of industry/government task forces should expedite problem-solving without the undesirable and time-consuming intervention of DOT or the Courts.

Should a dispute arise, the amendments would codify traditional and Court-sanctioned "tests" for balancing the requirements of a nationally, uniform system of regulation versus concerns for safety created by local circumstances.

Mr. Chairman, the for-hire tank truck industry recognizes that, regardless of regulatory uniformity and cooperation, accidents will happen and that the preponderant burden for response and remedial action will fall on State and local governments. For this very basic reason we support the mandated development and promulgation of transportation data to State and local officials. We support the concept of a basic registration program for all carriers, shippers and container manufacturers including the name of the party, its point of contact and a general description of its hazardous materials operations.

The physical and administrative capabilities of local emergency response units must be upgraded. We favor the concept of fair and equitable fees on all parties in the hazardous materials transportation community—to be applied nationally and in lieu of local fee structures—for this purpose. Again, local fees have the same effect as local regulations. They accomplish little more than provoking retaliation, disarray and the enrichment of the illegal operator.

Lastly, I stress that the present Hazardous Materials Transportation Act must be amended to accomplish these purposes. As one who has paid more than "his share of dues" in legal fees and expenses in considerable litigation before the Federal Courts, I doubt that you could find any two members of the entire judiciary who could or would agree on either the direction or implementation of Congressional intent espoused in the 1974 legislation.

Unlike 1984, the Coalition has come to you with a proposed "system"—not just a series of related amendments. We urge enactment of the Coalition's concepts and objectives.

Senator DANFORTH. Thank you. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

My name is Andrew Doyle. I'm an attorney with the National Paint and Coatings Association located in Washington, D.C. I am here today representing the Hazardous Materials Advisory Council, which I shall refer to hereafter as HMAC.

HMAC appreciates this opportunity to testify before and lend its views to this committee. HMAC is a nonprofit organization consisting of approximately 200 corporations, firms, and associations involved in the shipment and transportation of hazardous materials and hazardous wastes which are subject to the provisions of the Hazardous Materials Transportation Act of 1974, the Resource Conservation and Recovery Act, and other similar environmental laws.

Last summer, HMAC testified before this committee on title IV of S. 1108, the Hazardous Materials Transportation Act Amendments of 1983. As we noted then, fundamental differences between industry and State and local governments have blocked passage of any amendments to the HMTA for years. Industry has pushed for uniformity of regulations and Federal preemption of most State and local activity.

On the other hand, State and local governments have continued to assert their authority to regulate hazardous materials transportation without Federal intervention. Attempting to find common ground, a number of industry and State and local government organizations formed a coalition to explore the issues of hazardous materials transportation.

HMAC served as secretary-coordinator of the initial coalition, but as befitting an organization representing the entire spectrum of hazardous materials transportation, we have taken no position on the coalition's proposal. We can, however, point to certain areas that need to be addressed in any bill offered by this committee.

As we have stated on previous occasions, one area is a clear delineation of Federal, State, and local responsibilities in insuring safety in the transportation of hazardous materials. Industry recognizes that there may be unique situations in which States and localities should be able to exercise regulatory authority in order to meet public safety needs. We need to be assured, however, that such action fits into a nationally uniform regulatory and enforcement scheme, and that the regulations adopted actually promote overall safety.

Mr. Chairman, the single most pressing problem facing our industry today is the proliferation of unilateral local bans, prenotification requirements, time of day restrictions, and routing schemes for highway transport of hazardous materials. Such actions are often taken without consulting either the affected industry or their surrounding jurisdictions, and without any concern for their effect on interstate commerce.

This is not to say that highway routing plans are never necessary. Indeed, many people labor under the misconception that DOT currently forbids local or regional routing schemes or time of day restrictions. This is not true. DOT will consider non-Federal routing plans consistent with Federal regulations if they meet a few basic criteria.

For example, the plan must provide alternative routes and be based on a quantifiable safety analysis. This safety analysis is done in order to insure that overall safety is actually increased and not decreased. Additionally, it must have been developed with the full participation of all affected parties, including industry and surrounding jurisdictions.

Some communities, such as Portland, Oreg., have adopted plans according to these guidelines. As an organization devoted to safety, HMAC supports DOT guidelines and plans developed according to them. The problem is that the guidelines are strictly advisory and not mandatory. Any amendment to the HMTA should include a set of criteria that must be followed in establishing non-Federal highway routing schemes.

In discussions with State and local representatives, we have found that bans and other restrictions often stem from the sense that jurisdictions cannot adequately protect their citizens in case of an accident. Often a jurisdiction does not know what materials are going through it, what regulations govern them and how to respond to that accident.

This, too, can be addressed in Federal legislation. We have long held that greater awareness and enforcement of the Federal regulatory scheme is needed, not additional State and local regulations.

The need for training can be illustrated by one recent incident cited by the National Transportation Safety Board. A tank truck carrying 5,600 gallons of divinylbenzene overturned near the town of Odessa, Del. and began leaking material through the dome of the tank. As the Safety Board noted in its report on the accident, over 100 emergency response personnel responded to the accident, but none of them had either previous experience or formal training for handling a hazardous materials transportation accident.

Although the material was properly identified on the shipping paper and placard and response personnel had copies of the DOT's emergency guidebook, lack of training and preparation led to the misidentification of the product and the application of the wrong response procedures.

Let me conclude by saying that HMAC is convinced that a practical, equitable and mutually acceptable solution exists to the problems facing both industry and State and local governments in the transportation of hazardous materials. Congress can contribute to these solutions by more clearly delineating each level of government's responsibilities in regulating hazardous materials movements.

Technical areas, including materials classification, equipment, and packaging specifications, along with hazard communication requirements, need to be reserved exclusively for Federal regulation. Other areas, such as highway routing, can be addressed by State and local authority, but only under certain rigid Federal guidelines.

I would be happy to answer any questions you may have.

[The statement follows:]

STATEMENT OF JAMES A. DOYLE, HAZARDOUS MATERIALS ADVISORY COUNCIL

I am Andy Doyle, and I am here representing the Hazardous Materials Advisory Council, which I shall refer to as "HMAC." HMAC appreciates this opportunity to testify once more before this committee.

HMAC is a non-profit organization with an office in Washington, D.C. Its membership consists of approximately 200 corporations, firms and associations involved in the shipment and transportation of hazardous materials and hazardous wastes which are subject to the provisions of the Hazardous Materials Transportation Act of 1974, the Resource Conservation and Recovery Act, and similar federal laws. HMAC is the only national organization devoted to promoting safety in the domestic and international transportation of hazardous materials which represents all modes of transportation, shippers of varying size, container manufacturers, and emergency response and waste clean-up companies.

Last summer, HMAC testified before this committee on Title IV of S. 1108, the Hazardous Materials Transportation Act Amendments of 1983. As we noted then, fundamental differences between industry and state and local governments have blocked passage of any amendments to the HMTA for years. On one side, industry has pushed for uniformity of regulations and federal preemption of most state and local activity. On the other, state and local governments have defended their authority to regulate hazardous materials transportation without federal intervention.

Attempting to find common ground, a number of industry and state and local government organizations formed a coalition to explore issues of hazardous materials transportation. HMAC served as Secretariat/Coordinator of the initial coalition but, as befitting an organization representing the entire spectrum of the hazardous materials transportation industry, we have taken no position on the coalition's proposal.

We can, however, point to areas that need to be addressed in any bill offered by the committee. As we stated previously, one is a clear delineation of federal, state and local roles and responsibilities in ensuring safety in the transportaton of hazardous materials. Industry recognizes that there may be unique situations in which states and localities should be able to exercise regulatory authority in order to meet public safety needs. We need to be assured, however, that such action fits into a nationally uniform regulatory and enforcement scheme, and that the regulations adopted actually promote overall safety.

Mister Chairman, the single most pressing problem facing our industry today is the proliferation of unilateral local bans, prenotification requirements, time-of-day restrictions and routing schemes for highway transport of hazardous materials. Such actions are often taken without consulting either the affected industry or the surrounding jurisdictions which must accept the rerouted shipments, and without my concern for their effect on interstate commerce. These measures simply transfer the risk involved in hazardous materials transportation onto neighboring jurisdictions, and they can actually contribute to a decrease, not an increase, in the overall level of safety, by sending shipments over roads that are less safe than the more direct routes.

This is not to say that highway routing plans are never necessary. Indeed, many people labor under the misconception that DOT currently forbids local or regional routing schemes and/or time-of-day restrictions. This is not true. DOT will consider non-federal routing plans consistent with federal regulations if they meet a few basic criteria. For example, the plan must provide alternate routes, and be based on a quantifiable safety analysis of all alternatives, in order to insure that overall safety is indeed increased. Additionally, it must have been developed with the full participation of all affected parties, including industry and surrounding jurisdictions.

Some communities, such as Portland, Oregon, have adopted plans according to these guidelines. As on organization devoted to safety, HMAC supports DOT's guidelines and plans developed according to them. The problem is that the guidelines are strictly advisory, not mandatory. Any amendment to the HMTA should include among its delineation of federal, state and local roles and responsibilities a set of criteria that must be followed in establishing non-federal highway routing schemes.

In discussions with state and local representatives, we have found that bans and other restrictions often stem from the sense that jurisdictions cannot adequately protect their citizens in case of an accident. Often a jurisdiction does not know what materials are going through it, what regulations govern them, and how to respond to an accident. This, too, can be addressed in Federal legislation. We have long held that greater awareness and enforcement of the Federal regulatory system is what is needed, not additional sets of regulations. Congress can assist state and local governments in this area by providing support, such as training for emergency response programs.

The need for training can be illustrated by one recent incident, cited by the National Transportation Safety Board. A tank-truck carrying 5,600 gallons of divinylbenzene (DVB) overturned near the town of Odessa, Delaware, and began leaking material through the dome of the tank. As the Safety Board noted in its report on the accident, "[o]ver 100 emergency response personnel responded to the accident, but none of them had either previous experience or formal training for handling a hazardous materials transportation accident". Although the material was properly identified on the shipping paper and placard, and response personnel had copies of DOT'S Emergency Response Guide, lack of training and preparation led to misidentification of the product and application of the wrong response procedures. As a result, 48 response personnel required treatment for exposure to the product, and what should have been a routine response turned into a major incident. Although NTSB concluded that additional, detailed information might be required with each shipment, training in the use of DOT's system and CHEMTREC, CMA's 24-hour emergency response hotline, could have prevented this result.

This incident also illustrates the importance of a hazardous materials response plan. Through preplanning, communities can familiarize themselves with the kinds of industry in the area, as well as the kinds of equipment and assistance that local companies can make available to them in emergencies. Lead response agencies and on-scene coordinators can also be designated. Industry is one of the best sources of information and expertise in this area, and should be consulted by any jurisdiction forming a plan.

We advocate that communities use this approach, as opposed to shipment-by-shipment prenotification, which some organizations have promoted as a way of identifying materials passing through a jurisdiction. Prenotification can impose a substantial burden on interstate commerce, without increasing an agency's ability to respond to accidents, and can actually be used as a way to regulate routing, as carriers would be encouraged to go around jurisdictions with such requirements. We would like to bring the Committee's attention to a recent study conducted by the Puget Sound Council of Governments under contract to DOT, which concluded that prenotification would be effective only in cases of extremely high-risk shipments which travel very infrequently.

In conclusion, we are convinced that practical, equitable and mutually acceptable solutions exist to the problems facing both industry and state and local governments in the transportation of hazardous materials. Congress can contribute to these solutions by more clearly delineating each level of government's responsibilities in regulating hazardous materials movements. Technical areas, including materials classification, equipment and packaging specifications, and hazard communication requirements, need to be reserved exclusively for Federal regulation. Other areas, such as highway routing, can be addressed by state and local authorities, but only under certain guidelines.

I would be happy to answer any questions you may have.

Senator DANFORTH. Thank you. Dr. Millar.

Dr. MILLAR. I am Fred Millar, director of the Nuclear and Hazardous Materials Transportation Project of the Environmental Policy Institute. The institute is a research and educational public foundation, operating under section 501(c)(3) of the Internal Revenue Code.

Attention to problems with hazardous materials transportation by environmentalists and by State and local officials has been given new impetus by the heightened overall public concern about hazardous waste management and by such well-publicized accidents as the Livingston, La. derailment, which spilled 20,000 gallons of perchloroethylene into the ground over several days.

Federal officials are also concerned enough to fund studies on the problems with hazardous waste transportation specifically. The most recent draft EPA report on the subject predicts that as much or more environmental damage may result from spills of hazardous waste in transportation as in the treatment and disposal facilities for the waste.

Recent State and local regulation in hazardous materials transportation include developments in Dallas-Fort Worth, Portland, the Puget Sound region, Cincinnatti, Columbus, and elsewhere. They indicate that, first, States and local governments are increasingly interested in designating the safest routing for hazardous materials transportation. This interest is often based on considerations of providing adequate emergency response in case of an accident.

For example, in the DOT-sponsored hazardous materials study in the Puget Sound region, 75 percent of the local emergency response agencies indicated an interest in addressing the routing issue.

Second, State and local governments are willing to work in a noncrisis atmosphere, within the framework of the current Federal law and regulations on hazardous materials transportation, even on the sensitive issues, such as route designations.

The major features of that framework are, according to DOT's authoritative interpretation, No. 1, consultation with affected jurisdictions, and No. 2, comparative risk analysis of the alternative routings, and choice of the safer of any two alternatives so that overall public safety is enhanced.

Third, State and local governments are serious about enacting legislation to promote the safety of hazardous materials transportation without unduly burdening commerce. The proposed Columbus ordinance, for example, is modeled on the Boston regulations, and includes the most frequently enacted kinds of provisions for hazardous materials transportation safety: First, adoption of Federal regulations; second, prohibition of through truck shipments on interstates and city streets; third, curfews during business hours in downtown areas; fourth, permits for certain of the most hazardous cargoes, including requirements for showing of need for the shipment; fifth, designation of routes for shipments with origin or destination within the downtown area; and sixth, annual permit fees.

There is no evidence to our knowledge that any local or State routing regulation or other restriction on hazardous materials transportation has caused any lessening of overall public safety. In two of the major Federal court cases in which cities have been challenged for such restrictions on the most dangerous nonnuclear cargoes; namely, the *Boston* case and the *New York City Ritter* case, which we cited at length in last year's testimony before this committee, the cities' restrictions were upheld by the Federal courts as enhancing public safety and not unduly burdening interstate commerce.

The *Boston* case is still under litigation. Meanwhile, the city has been enforcing its regulations for 3 years.

The Environmental Policy Institute opposes proposals to amend the Hazardous Materials Transportation Act in comprehensive ways which imply that major safety problems have been experienced by shippers or carriers of hazardous materials because of non-Federal regulations.

On the contrary, the hazardous materials industries overall have been imposing their risks and costs—for example, the cost of maintaining emergency response capabilities—onto cities and States in a context of almost nonexistent enforcement of even the most elementary of Federal regulations.

Now that with the passage of the Surface Transportation Assistance Act of 1983 the enforcement burden has exclusively been handed over to the States, this socialization of hazardous materials transportation risks and costs is beginning to be countered by non-Federal efforts to minimize the risks, for example with routing regulations; and to force the industries to internalize some of the costs of monitoring, enforcement and emergency response, for example, with user fees or license fees.

There is a longstanding but nearly unknown Federal regulation that directs trucks with hazardous cargoes to avoid crowded areas, tunnels and so forth unless no practicable alternative is available. This rule seems widely ignored by truckers and shippers and hardly ever enforced by State or local police. It is no wonder that many non-Federal regulators are pursuing regulatory alternatives to the current situation in which the shippers and carriers of hazardous cargoes choose their routes with little input from public officials.

Let me conclude by saying that the Environmental Policy Institute feels that localities have shown quite a willingness to work in regional ways. DOT recently funded seven regional studies around the country on hazardous materials routings. The results of that are just coming in. The regional cooperation in various areas is already well underway.

We would oppose any attempt by those who feel that the current balanced partnership that is imbedded in the HMTA and the regulations is unworkable. That system is young, but it deserves a chance to work.

[The statement follows:]

STATEMENT OF DR. FRED MILLAR, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY INSTITUTE

Mr. Chairman and Members of the Subcommittee: I am Fred Millar, Director of the Nuclear and Hazardous Materials Transportation Project of the Environmental Policy Institute. The Institute is a research and educational public foundation operating under Section 501(c)(3) of the Internal Revenue Code. Founded in 1974, the Institute concentrates on energy conservation, water resources, coal, oil and gas, nuclear, synthetic fuels, and agricultural resource issues.

EPI has been working on hazardous materials transportation issues since 1979, and has testified in numerous state and local legislative bodies and in both houses of Congress. EPI was a consultant for the City of London, England on nuclear spent fuel transport by rail and was a member of the national Task Force on Nuclear Transport issues convened by the President's State Planning Council on Radioactive Waste Management. Much of our current work involves state and local regulation of the transportation of hazardous wastes and other hazardous materials. We are consultants for the Governor of Utah and for the National Governors' Association Task Force on Hazardous Materials Transportation. We appreciate the opportunity to testify again before this Subcommittee.

Attention to problems with hazardous materials transportation by environmentalists and by state and local officials has been given new impetus by the heightened overall public concern about hazardous waste management and by such well-publicized accidents as the Livingston, LA derailment which spilled 20,000 gallons of perchloroethylene into the ground over several days.

Federal officials are also concerned enough to fund studies on the problems with hazardous waste transportation specifically. The most recent draft EPA report on the subject predicts that as much or more environmental damage may result from spills of hazardous wastes in transportation as in the treatment and disposal facilities for the wastes.

The EPA report, "Assessing the Releases and Costs Associated with Trust Transport of Hazardous Wastes (DRAFT) Final Report, January 1984", comes from the Office of Solid Waste, U.S. Environmental Protection Agency and ICF Incorporated, Washington, D.C. and is a very sophisticated risk analysis. It concludes in part:

"Accidents involving hazardous wastes have the potential to produce catastrophic effects on people and the environment. Depending on the nature of the waste, the extent of its release and where it occurs, hazardous waste spills can impose serious public safety problems through contamination of the surrounding air, water or soil. Therefore, it is of utmost importance to dispose of these wastes with a minimal impact on the environment and to find safer methods of transporting them from their generation zones to disposal sites." (page 17)

"Perhaps the most important result of this study is that the release rates associated with transporting hazardous wastes by truck appear to be as large as the potential releases at treatment and disposal sites. In fact, for some W-E-T combinations, transport may be a potentially more dangerous activity. As a result, policymakers should give careful consideration to the relative risks involved in the treatment, transport and disposal of hazardous wastes." (page 16)

In our testimony today we will address some of the issues we see as salient in improving the safety of the estimated 180 million shipments (4 billion tons) annually of hazardous materials cargoes. We will also suggest that many of the recent initiatives by state and local governments to regulate hazardous materials transportation deserve to be supported by Congress as likely to improve safety. Finally we will comment on proposed legislation on hazardous materials transportation that may in this session come before the subcommittee.

STATE AND LOCAL REGULATION IN HAZARDOUS MATERIALS TRANSPORTATION

Recent developments in Dallas-Fort Worth, Portland, the Puget Sound region, Cincinnati, Columbus, and elsewhere indicate that:

State and local governments are increasingly interested in designating the safest routing for hazardous materials transportation. This interest is often based on considerations of providing adequate emergency response in case of an accident (e.g., in the DOT-sponsored Hazardous Materials Study in the Puget Sound region, "Seventy-five percent of local [emergency] response agencies indicated an interest in addressing the routing issue." [p. 2.9])

State and local governments are willing to work in a non-crisis atmosphere, within the framework of the current federal law and regulations on hazardous materials transportation, even on the sensitive issues such as route designations. The major features of that framework are, according to DOT's authoritative interpretations:

1. Consultation with affected jurisdictions.
2. Comparative risk analysis of the alternative routings, and choice of the safer of any two alternatives, so that overall public safety is enhanced.

State and local governments are serious about enacting legislation to promote the safety of hazardous materials transportation without unduly burdening commerce. The proposed Columbus ordinance, for example, is modelled on the Boston regulations, and includes th most frequently-enacted kinds of provisions for hazardous materials transportation safety:

1. Adoption of federal regulations (49 CFR).
2. Prohibition of through truck shipments on Interstates and city streets.
3. Curfew during business hours in downtown areas.
4. Permits for certain of the most hazardous cargoes, including requirement for showing of need for the shipment.
5. Designation of routes for shipments with origin or destination within the downtown area.
6. Annual permit fees.

There is not evidence to our knowledge that any local or state routing regulation or other restriction on hazardous materials transportation has caused any lessening of overall public safety. In two of the major court cases in which cities have been challenged for such restrictions on the most dangerous non-nuclear cargoes (the Boston case and the New York City "Ritter" case, which we cited at length in last year's testimony before this committee—see "Highway Safety Act of 1983", Senate Hearing 98-384, Serial No. 98-35), the cities' restrictions were upheld by the federal courts as enhancing public safety and not unduly burdening interstate commerce. The Boston case is still under litigation; meanwhile the City has been enforcing its regulations for three years.

EPI opposes proposals to amend the Hazardous Materials Transportation Act in comprehensive ways which imply that major safety problems have been experienced by shippers or carriers of hazardous materials because of nonfederal regulations. On the contrary, the hazardous materials industries overall have been imposing their risks and costs (for example, the costs of maintaining emergency response capabilities) onto cities and states in a context of almost nonexistent enforcement of even the most elementary of federal regulations. Now that with the passage of the Surface Transportation Assistance Act of 1983 the enforcement burden has explicitly been handed over to the states, this socialization of hazardous materials transportation risks and costs is beginning to be countered by nonfederal efforts to minimized risks (e.g., with routing regulations) and to force the industries to internalize some of the costs of monitoring, enforcement, and emergency response (e.g., with user fees or license fees).

There is a long-standing but nearly unknown federal regulation that directs trucks with hazardous cargoes to avoid crowded areas, tunnels, etc. unless no practicable alternative is available (49 CFR 397.9). This rule seems widely ignored by truckers and shippers, and seems hardly ever enforced by state or local police. No such rule currently exists for rail shipments of hazardous cargoes, although Congress recently directed the Federal Railroad Administration to study the feasibility of rail rerouting to avoid cities. It is no wonder that many nonfederal regulators are pursuing regulatory alternatives to the current situation in which the shippers and carriers of hazardous cargoes choose their routes with little input from public officials.

The preemption issues have taken a major share of the limelight in hazardous materials transportation politics recently because so many jurisdictions have begun to enact their own regulations in order to compensate for the inadequacies in federal regulations on nuclear and other hazardous materials transportation, especially on routing and time-of-day matters which DOT admits are inherently location-specific. Despite efforts of the shipper and carrier industry to blunt these state and local initiatives with preemptive U.S. Department of Transportation rules and administrative opinions, states and cities continue to enact new legislation.

Cities that have recently enacted or are preparing to enact restrictions on the routing of hazardous materials transportation (by truck only) include Dallas-Fort Worth, Columbus, and Cincinnati. The current federal regulations clearly allow such regulation by localities, provided there is no direct conflict with federal regulations and no "undue burden" on commerce. State legislatures in Illinois, California, Iowa, and other states are considering new legislation on hazardous materials transportation; the proposed California legislation (Assembly Bill 3274) comprehensively sets out how localities may enact routing regulations in cooperation with surrounding jurisdictions and state agencies, using available federal guidelines.

Actual court challenges to state and local restrictions have not been mounted in most cases, no doubt because in the few cases that have been litigated federal judges have shown a tendency to view the state and local regulations as reasonable and rule in favor of the cities or states, (the Second Circuit decision preempting only nuclear truck bans being a notable exception).

It must be admitted, however, that various representatives of the trucking interests have found the results of many of the court decisions and the DOT administrative rulings to be less than satisfactory, so that we find them suggesting that there should be sweeping amendments to the Hazardous Materials Transportation Act. We will discuss their proposal more fully below, and now only wish to point out that it is not DOT's process that is called into question by such proposals so much as the original Congressional intent in the Hazardous Materials Transportation Act.

Trucking industry spokesmen testified on the House side most recently that what they wanted was "total federal preemption" in hazardous materials transportation issues. The American Trucking Association has also in an analogous matter petitioned DOT to preempt all state "right-to-know laws" that require trucking firms to provide detailed Material Safety Data Sheet information for the workers in truck terminals on what hazardous chemicals are present in the workplace. There seems to be a "preemption" button that gets stuck in the repeat mode on some people's word processors.

The most recent developments in the nuclear truck issues have not been very helpful in clarifying the substantive issues raised by the state attorneys' general court challenges to the preemptive federal rule HM-164. In 1981 DOT promulgated (HM-164) that, in the case of nuclear trucks only, require that a state-level agency designate roiutes if alternatives to the Interstates are desired or if one or more Interstates is to be prohibited. For other hazardous materials transportation cargoes, whether by rail or highway or barge, there are no such specific regulations for route designation, although the Boston Inconsistency Ruling is no doubt a good indicator of what DOT considers to be good practice in all cases. (Very few jurisdictions have actually enacted restrictions on non-highway modes of hazardous materials transportation as yet.)

Both the U.S. Supreme Court and the Federal Court for the Northern District of Ohio have recently declined to review the substance of the challenges to the HM-164 rule. Since the 1983 Second Circuit Court of Appeals decision had upheld the rule in the face of New York City's challenge, now New York City reportedly will pursue its available administrative options within DOT, including designation of routes around the city (under the auspices of a state agency) and application for a non-preemption determination.

REGIONAL ACTIVITY IN HAZARDOUS MATERIALS TRANSPORTATION

Some localities are able to do regional hazardous materials transportation route designations through established regional councils of governments. This process is well along in Dallas-Fort Worth, for example, coordinated through the North Central Texas Council of Governments, which in its "Hazardous Materials Transportation Routing Study" of January 1984 fulfilled both of the DOT conditions for legitimate route designations.

Other localities may lack either the regional government resources or the financial resources to do a comprehensive risk analysis. The City of Cincinnati, for example, recently began enforcing more vigorously the existing federal regulation, 49 CFR 397.9, which says that hazardous materials trucks should not go through densely populated areas and other high-risk areas. (Cincinnati is technically enforcing the regulations of the Ohio Public Utilities Commission, which be reference has adopted the federal regulations.) The city's $75 tickets to truckers using the Interstates 71 and 75 through the city is meant to encourage them to use the beltway (I-275) around the city. When advised by DOT (in a March 22, 1984 letter to the Mayor) that the city should perform risk analyses and consult with affected jurisdictions, the city has indicated a willingness to do so, especially if federal funding help could be forthcoming.

DOT recently funded seven regional demonstration studies on hazardous materials transportation. Now completed and printed, the studies' costs ranged from approximately $50,000 in those areas which also contributed local staff resources (Portland and New Orleans) to $75-98,000 for those cities that hired consultant help. DOT officials currently feel that more large federal grants are unlikely and unnecessary. DOT will distribute the reports from the seven regional studies and will "pack a bag and do roadshows" for localities who need help in future hazardous materials transportation studies and route designations.

Cities which are densely-populated and also financially hard-pressed may perhaps be excused for feeling that Interstates through their downtown areas may be (in the words of the proposed Columbus ordinance) "conclusively presumed to be routes which go through or near heavily populated areas," and therefore can be prohibited to hazardous materials transportation by truck, under existing federal law in 49 CFR 397.9. Even in these cases, however, when the main federal requirements for jurisdictions wishing to enact such local bans are outlined to the cities there is little evidence of implacable unwillingness to do route analyses and to consult with affected jurisdictions. In the absence of new federal grants for these purposes, states and localities will no doubt find user fees as the most attractive alternative method of raising the necessary funds for regulatory purposes.

THE FEDERAL-NON-FEDERAL PARTNERSHIP IN HAZARDOUS MATERIALS TRANSPORTATION REGULATION

Activity over the last few years by localities in regulating the safety of hazardous materials transportation has occurred within a context of a maturing federal-nonfederal "partnership" framework whose outlines have progressively become more clear since the passage of the Hazardous Materials Transportation Act in 1974 and the New York City restrictive ordinance on radioactive materials trucks in 1976. The centerpiece of federal law and regulation, the Hazardous Materials Transportation Act, provides an explicit basis for the sharing of authority in hazardous materials transportation regulation. The central principle is that the federal regulations establish a base level of safety, for example in routing regulations, while states and localities may regulate more stringently if overall safety is enhanced.

Several major developments in the intervening years have helped to clarify and solidify the framework: the HM-164 preemptive federal rule on radioactive trucks, DOT inconsistency rulings and "guidelines" documents for the use of states and localities, and court decisions.

This framework provides a balanced opportunity for federal and nonfederal safety regulation in hazardous materials transportation. States and localities have shown in numerous examples a willingness to work within the constraints of the current law. The framework is now in place. It deserves a chance to prove its workability.

DOT has interpreted its own regulations, for example in the Boston inconsistency ruling and in correspondence with the City of Cincinnati, as allowing local regulations which enchance safety. The most complete succinct analysis of DOT's regulatory posture on state and local "routing" regulations, broadly conceived, is found in the DOT's decision not to overrule Boston's routing regulations (See DOT's Inconsistency Ruling, IR-3 (Federal Register, April 29, 1982, pp. 18457 ff.) A shorter version is found in DOT's letter to the Mayor of Cincinnati, previously mentioned. These two sources show how DOT is using formal and informal ways of solidifying its regulatory framework on hazardous materials transportation and communicating information on this framework to localities and states.

By and large we find that localities and states are willing to work with the general thrust of the federal guidelines and that the current framework of federal law allows them considerable latitude in enacting reasonable regulations, even "localized bans" in certain cases. (It is the very flexibility of the current federal regulations, of course, that prompt proposals such as that the "Hazardous Materials Coalition" for injecting more preemptive language into the federal Hazardous Materials Transportation Act. Such proposals are useful in part for their revelations about what regulatory powers are available for nonfederal regulators in the Hazardous Materials Act.)

No credible evidence has been presented in DOT rulemakings or in the relevant court cases to show that the exercise of state and local authority within this "dual authority" framework has failed to promote safety. The flexibility in regulation inherent in this arrangement is much valued by state and local officials who must bear the weight of enforcement of federal regulations as well as their own (increasingly the same), emergency response, and cleanup of spills.

It seems fair to say that in the current fiscal climate on the federal level there has been virtually no interest in the last three years in any new federal aid programs for states and localities which were not linked with some quid pro quo in terms of more federal preemption in hazardous materials transportation regulation.

As states are now gearing up for increased regulation of hazardous materials transportation, the general trend in DOT hazardous materials transportation programs over the last three years has been one of reduction in personnel, sometimes by as much as 30%. We support the general principle that in areas where the federal agencies are not regulating adequately, states and localities should be allowed to fill the gaps.

In a few areas, at least, DOT's Materials Transportation Bureau should expand its hazardous materials transportation efforts, for example in the upgrading of standards for cargo tank trucks, in developing some standard by which nonfederal officials can judge the caliber of the varied emergency response courses available nationally, and in developing methods by which states and localities can utilize the new database and information capabilities for determining hazardous materials transportation flow. If the Hazardous Materials Transportation Act is opened up for amendments, perhaps some important new DOT programs can be set in place.

BASIC TECHNICAL PROBLEMS: INFORMATION AND RISK RANKINGS IN HAZARDOUS MATERIALS TRANSPORTATION

In beginning to regulate actively in this area, among the technical problems states and localities face are two fundamentl underlying ones: how to get a handle on the hazardous materials transportation industry in order to reasonably regulate it and how to reasonably distinguish the most dangerous hazardous materials transportation cargoes in order not to overburden regulatory systems with too much detail.

Getting a handle on the movements of hazardous materials transportation, as virtually all of the recent critical studies of the federal regulatory hazardous materials transportation program have pointed out as lacking at present, has recently been seen by local and state regulators as involving two new kinds of regulation:

(a) "Right-to-Know" laws, which began with workplace rights to information about chemical exposures and then expanded to a 'community right-to-know' about what hazardous materials are stored and transported in an area. In the transportation sector, "Right-to-Know" may not necessarily or usefully mean that thousands of Material Safety Data Sheets need be filed on every kind of hazardous cargo that passes through or is handled in a community. A paring down to regulation that gets information on only the most dangerous cargoes transported or warehoused (but still technically in the transport sector as an identifiable lot with a destination other than the current location) in the community would no doubt be sufficient.

(b) License laws of various kinds. In the absence of federal data on the hazardous materials transportation industry, combinations of these two types of new regulations are seen as necessary to provide information on the flows (routes and volumes) of hazardous materials transportation and on terminal and handling points that bear scrutiny. The base of information that nonfederal officials wish to develop is seen as necessary for four crucial safety functions:

1. Deciding about routing of hazardous materials transportation cargoes.
2. Targetting of enforcement.
3. Targetting of emergency response training.

Raising funds for regulatory programs.

As the new federally-sponsored information data bases and computer capabilities for estimating the flows of hazardous materials transportation by rail and truck become more widely known, it will be hard to argue that such information, even if on hazardous materials transportation flows that vary considerably by season (e.g., pesticides or propane) would not be useful in nonfederal regulatory efforts.

A critical regulatory tool in most of these areas will be some method that allows the identification of the highest-risk cargoes for purposes of state and local regulation. Many nonfederal jurisdictions, of course, already have done some of this, for example, in defining routes for explosives. The federal agencies have also discriminated the highest-risk cargoes in such areas as routing rules for explosives (49 CFR

397.9) and for large-quantity nuclear truck (HM-164), rail tank car retrofit rules, and numerous exemptions and rules for specific cargoes such as cryogenics. One "break point" for identifying the highest-risk hazardous cargoes that might be particularly useful for state and local regulators is the one in the current Interstate Commerce Commission rules (Part 387) on the insurance coverage required for carriers of various cargoes ($5 million for the most dangerous cargoes).

In our previous testimony before this committee we cited several safety initiatives at the state and local level in the U.S. and Canada and argued that these should be encouraged as promoting safety rather than subjected to heavy federal preemption. We also quoted at some length two of the most relevant recent court cases on local hazardous materials transportation regulation in order to try to dispel the widely-held belief that interstate commerce is wholly a federal domain. We continue to feel that one of the major services that Congress could provide at this juncture is to safeguard the rights of states and localities to continue to enact regulation which they consider necessary for enhancing safety.

The Environmental Policy Institute is currently involved in doing a comprehensive legal analysis of some of the most promising regulations that states and localities may wish to use dealing with safety of hazardous materials cargoes.

We outlined in some detail in last year's testimony the currently available research on the potential for reducing risks by avoiding heavily populated areas, and we would like to suggest today that it will probably take some new legislative mandates for this stalled but potentially very valuable research program within the Federal Railroad Administration to be put on track again.

Another legislative initiative which would be helpful if the Hazardous Materials Transportation Act is opened up for amendments is a definition of "routing" regulations which would more clearly safeguard the rights of states and localities to enact user fees for enforcement and emergency response training and equipment. Currently such user fees and other licensing programs seem possibly subject to federal preemption (see HM-164 on nuclear trucks, specifically Appendix A) under the DOT interpretation that some of these may effectively re-route hazardous cargoes to avoid such fees.

COMMENTS ON CURRENT LEGISLATIVE PROPOSALS

The failure of the recent court decisions to resolve any of the tough preemption issues, especially surrounding the preemptive DOT rule for routing large-quantity radioactive trucks (HM-164), has prompted a flurry of constructive bills designed to resolve certain specific problems, Senator Specter's bill S. 2356 being one example. On the House side various bills have been introduced by Representatives Weiss, Aspin, Collins and Oakar.

H.R. 4850, "The Nuclear Waste Transportation Act of 1984," introduced on February 9, 1984 by Representative Oakar, seems a sensible response to the fact that with few exceptions all the proposed shipments of nuclear spent fuel in the U.S. for the next twenty years are unnecessary. With no final repository to be ready until at least the year 2005, the utilities which plan to juggle their spent fuel from one temporary storage site to another in the meantime are simply going where the rent is lower. The Oakar bill is a federal version of what many states and localities would like to do in terms of deciding about the "need" for various hazardous cargoes to move at any given time.

That any public officials may want to make such determinations may seem to infringe in a unique way with the prerogatives of corporate officials to decide if, how, and when to move hazardous goods around in commerce. How would criteria be devised for such a decision by public officials about the "need" to make dangerous shipments?

In fact, however, the U.S. Nuclear Regulatory Commission, directed to do so by the Nuclear Waste Policy Act of 1982, is in the process of devising criteria to decide whether nuclear utilities "need" to take advantage of federal interim storage for nuclear spent fuel. The main criterion mandated by the Act is whether the utility in question has maximized its potentials for on-site storage, so that transportation of nuclear spent fuel can be "minimized" as the Act explicitly directs DOE to do.

The main proposal, however, that one must address here has not yet been formally introduced as a bill, namely the latest proposal from the Hazardous Materials Coalition. We understand that not all of the organizations that have participated in discussions of previous Coalition drafts are endorsers of the current February 24, 1984 draft.

Those who support the Coalition proposal apparently feel that this is a good time to strike a deal, the general outlines of which are:

National organizations of state and local officials will give up their previously strong opposition to new legislation bringing more federal preemption over states and localities who regulate hazardous materials transportation.

Industry groups (shippers and carriers of hazardous cargoes) will acquiesce in new national user fees to get some help to states and localities for emergency response training.

We maintain that this is not a good deal. Our detailed critique follows.

Comments on the February 24, 1984, Version of the Proposed Bill From the 'Hazardous Materials Coalition'

The overall thrust of the Coalition (which a memo from the Dow Chemical representative calls, significantly, "the Coalition on National Unformity") is to try to squash the many recent initiatives by local and state officials and authorities (bridge, tunnel, turnpike) to regulate the safety of hazardous materials transportation and to head off future state and local (nonfederal) regulation in several areas. The main strategy of the proposed legislation is to compel DOT to exercise its regulatory authority in areas where it has not already done so fully enough to deter state and local regulation.

The proposed bill as submitted to Senate staff in late 1983 and in its latest version seeks to radically shift the current balance between federal and state/local authority to regulate hazardous materials transportation which is found in the current Hazardous Materials Transportation Act (HMTA) of 1974. The Coalition apparently views the current balance as leaving too much discretion for the courts to find that cities and states many reasonably regulate hazardous materials transportation in ways that some shippers and carriers of hazardous materials transportation find onerous.

Accomplishing such a radical shift in the current law governing hazmats would seem to require (1) that the shippers and carriers provide a list of horror stories where state/local regulations have caused serious safety problems, and (2) that the national organizations of state/local officials acquiesce in the Coalition's premptive thrust. We are unaware that any credible evidence has been brought forward in any forum, legislative or regulatory, to show how any state or local regulations have actually diminished safety. The second may be possible through the Coalition bill's offer of some new funding for state/local emergency response training and equipment, through a national "Hazardous Materials Emergency Response Trust Fund."

PREEMPTION PROVISIONS

The proposed bill increases federal preemptive powers over state/local regulators in four major ways:

1. The Coalition proposal would prohibit outright certain kinds of nonfederal unilateral actions:

E.g., bans (Sec. 404a3) It is important to note that DOT interprets "bans" in very broad terms (see HM-164), to include any nonfederal regulation that effectively would tend to reroute traffic through other jurisdictions, unless a compelling safety reason exists and the enacting jurisdiction has coordinated with the affected jurisdictions.

E.g., licensing laws (404a4). Except for hazardous wastes and nuclear wastes.

2. The Coalition proposal would penalize nonfederal jurisdictions which enact their own more stringent safety regulations. Such upstart jurisdictions would not be eligible for federal funds from two sources:

(a) from unrelated prior federal programs:

E.g. the main example here is the proposed Sec. 119, which would prohibit states or localities from getting federal money from the $150 million, five-year grants program for enforcement of federal regs on commercial motor vehicles under the Surface Transportation Assistance Act of 1982 (Sec. 402, 403, 404 in STAA) if States impose permit, registration, licensing, or similar programs as a method for enforceing federal hazardous materials transportation regs.

(b) from the proposed new industry-generated hazardous materials transportation Emergency Response Trust Fund. Section 408 of the proposed bill would amend the HMTA with a new Section 115 that says DOT may dole out the new money only to state/localities that behave themselves, i.e., that do not enact their own user fees to raise money for emergency response training and equipment (through various measures involving "permit, registration, licensing, . . . ").

3. The Coalition would sharply modify the current DOT administrative rulings procedure. Currently, DOT may now allow some local or state regulations that are

not identical with federal regulations to be upheld if the nonfederal regs promote safety without unduly burdening commerce.

Under the Coalition proposal this DOT inconsistency process would be modified to make it much tougher for states and localities to get favorable rulings from DOT, in that the proposed Sec. 407 (2) adds several onerous new conditions for getting such rulings from DOT.

4. The Coalition proposal would drastically increase DOT's centralized role in hazardous materials transportation regulation, by giving the Secretary of DOT a whole list of new areas where DOT would be compelled to exercise its old or new authority (the key word is "SHALL regulate" to replace "may regulate" in proposed Section 404a. And the scope is very broad: a general mandate in Sec. 404a. And the scope is very broad: a general ANY safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate . . . "

Some of the new powers to be given to DOT under the Coalition's proposal:

1. There is a special emphasis in the proposed bill on giving DOT the power to dominate ("wholly occupy the field of regulation", as the lawyers would say) the regulation of container manufacture and testing, and enforcement of these regs: see Secs. 404a and 406 (3)(a).

[This is an apparent attempt to head off state or local regulation designed to fill the gaps in federal regulation that have allowed major design defects in major containers for some of the most hazardous cargoes:

a. The rail tank cars: certified as adequately safe for moving huge quantities of explosive materials through cities, but after three disastrous explosions in 1977 a major retrofit had to be mandated, involving new design features such as head shields, shelf couplers, and thermal insulation. The retrofit is underway, but not at a pace satisfactory to the National Transportation Safety Board.

b. The major gasoline tank truck, the MC-306 and MC-305 design, has been recently found by federal studies to be generically defective. It doesn't meet federal specifications for containment of cargo; recent Federal Highway Administration studies show that even in a non-collision overturn, with only 10% of its cargo inside, the tank trucks leak from numerous manhole covers, valves and seals, an average of 2 gallons from each aperture in "a spray pattern looking for an ignition source." (See Fed. Register, vol. 47, no. 124, June 28, 198, p. 27876 and vol. 48, no. 68, April 7, 1983, p. 15127.)

c. Ten of the 17 nuclear spent fuel shipping casks in the U.S. have been withdrawn at one time or another as defective, and some never have been returned to service. The four General Electric rail shipping casks have $25,000 pressure relief valves that have the generic defect that they stick open, potentially releasing radioactive vapor in case of a serious accident. So the NRC has withdrawn those casks from use with a water coolant as per design.]

The Governor of Michigan in 1981 promulgated a state health regulation that said no spent nuclear fuel shipments could go through Michigan unless the casks had been physically tested. None of the current ones have been tested.

2. Data collection and distribution (Sec. 404 c) — new centralized powers to DOT.

3. "Handling" of hazardous materials (Sec. 405) — new centralized powers to DOT.

[This seems an attempt to preempt the new Right to Know ordinances and state laws that involve transportation and storage of hazardous materials]

4. Registration by DOT of shippers, carriers, and sellers of containers for hazardous materials transportation. This program is specifically described in the legislation as "at no time" to be "construed as a licensing program to grant, deny or revoke permission" for anyone to ship hazardous materials transportationor make containers. (Sec. 408, proposing new Sec. 113 of HMTA). The proposed legislation (in sec. 405 (2) (3)) also removes the earlier DOT authority for a registration program (Section 106 of the HMTA), no doubt so that the report language of the new bill can nail down tight the idea that the proposed registration is NOT to be a licensing program. [A federal licensing program is supported by some Coalition members, but not all. Supporters argue say licensing is a crucial safety measure and that without a federal program it may prove impossible to preempt state and local programs.]

5. Collection of fees from the hazardous materials industry for an Emergency Response Trust Fund. (new Secs. 114-116)

6. DOT assessment of "all existing Federal, state and a sampling of local and authority information requirements", so that subsequently DOT "Shall promulgate" regs for a "uniform" national system of data collection and distribution and for a uniform national accident report and reporting system. (new Sec. 116)

7. Federal certification of hazardous materials training programs attended by state or local personnel.

In no way can DOT, even with funding, do all these new tasks. The harardous materials transportation sections of DOT have personnel ceilings which are considerably lower than 3 to 4 years ago, and these offices cannot even do the jobs they place high priority on, for example, improve the safety of gasoline tank trucks.

Proposed report language from industry participants in the coalition has been written in such a way as to make clear that the new DOT authority is intended to preempt state and local regulation.

One example of this is the proposed report language that will make clear that the overall mandate that the DOT Secretary 'SHALL' promulgate regulations in so many new areas does NOT necessarily mean that new regulations are necessary in every area, but that in every area the Secretary must "exercise DOT's authority", in some cases by declaring that no new regulations are necessary. This would be occupying the field with a "no-standard standard" that leaves no room for nonfederal regulation.

A major aim for some of the industry participants in the coalition is any kind of new hazmats legislation that can "improve on" the original and currently binding congressional intent of the HMTA of 1974.

The HMTA is a safety-oriented act, with "national uniformity of regulations" as a sub-standard to be given weight mainly insofar as it aids safety. Despite the emphasis that some industry and federal officials try to give to the "uniformity" goal as if it were on a par with the safety goal, the federal courts have treated the HMTA as balancing authority to regulate hazardous materials transportation between federal and state/local officials and have upheld the flexibility in the HMTA that can allow non-uniform nonfederal regulations to exist provided they enhance safety. The proposed Coalition bill would swing the balance far in the direction of more federal preemption. See for example, the Sec. 408 "Purposes" language in the proposed bill: "consistency . . . nationally uniform regulatory program . . . (and) continuous transportation" are elevated to high national Congressional purposes.

Industry periodicals candidly speak of the Coalition proposal in terms of "the uniformity we are buying" (with the trade-off supposedly being the money states and localities will receive for emergency response training).

Is the tradeoff worth it for State and local officials?

The previous political deal, as proposed in Senator Danforth's proposed amendment to S. 960 in 1981, was that if the national organizations of states and localities would support more federal preemption, hazardous materials transportation industries would supppor a $70 million program of federal grants for ER training to the states and localities. Since no one believes that any substantial new federal grants program for hazardous materials transportation programs could be enacted in the current fiscal climate, this deal is an empty one for the states, and has been abandoned.

The new deal, in earlier Coalition drafts, proposes a $24 million program for the new Trust Fund. Some industry observers are concerned that when divided among the states, such a modest program "won't buy much", and might open the way for pressures for expanding the funding programs.

A basic question for allconcerned with enhancing emergency capabilities is: at what level of government is an adequate program of funding such capabilities likely to be possible? It might help to know that the federal hazardous materials transportation program at DOT is supposed to regulate the safety of 412,800 tank trucks that regularly transport haz mats of all kinds, and that DOT has on the order of 9 full-time inspectors in the country.

The new bill would acquiesce in the current movement to shift virtually all routine enforcement responsibility for the federal hazardous materials transportation regs to the states, but offers no new grants to help states pick up the burden. The money now beginning to flow from DOT to the states for enforcement under the previous Surface Transportation Assistance Act is for all commercial motor vehicle programs, not just or even significantly for haz mats enforcement. (See the STAA of 1982)

A questionable new concept called 'concurrent jurisdiction' appears in the coalition proposal (see secs. 404b, etc.) which is designed to constrict the scope of regulation by States and localities in the two controversial areas of:

1. Notification.
2. Routing restrictions.

The idea is that in future states and localities could only regulate in these areas within the much tougher constrictions of the new "inconsistency criteria" proposed in the Coalition bill (Section 112(b)(2)(a)). An earlier (October 17, 1983) version of the Coalition proposed bill had relied on federal "performance standards" to set limits on nonfederal regulations. Industry discussions indicated that the new "performance standards/task force" method had been developed to "handle" the areas where localities and states are most insistent on a regulatory role. Specifically citing HM-164, the recently promulgated nuclear truck routing regulation, as the model, the earlier version of the proposed bill called for DOT to develop performance standards for local regulation and for government-industry task forces to help develop the state or local regs.

HM-164 has, of course, proved quite controversial among state and local officials, and was challenged in separate court actions by Ohio and by New York State/New York City. In the latter case, a 1983 Second Circuit Court of Appeals decision that upheld HM-164 was appealed to the Supreme Court which declined to review the case.

Senator DANFORTH. Thank you.

Do you, Mr. Doyle and Mr. Harvison and Mr. Myers, do you agree that we now have a current balanced partnership with the Federal, State and local officials dealing with hazardous waste?

Mr. DOYLE. Mr. Chairman, on behalf of HMAC, industry feels that the state of the HMTA is in sort of a disarray, and we still feel that some of the localities are still promulgating regulations in areas which we would rather see exclusively in the hands of the Federal Government, especially tank truck or truck specifications. This is being done in the city of New York and I think should remain exclusively Federal.

Senator DANFORTH. Do you agree with that, Mr. Millar?

Dr. MILLAR. No, I think that what we have seen is in fact, a good deal of willingness, even by jurisdictions——

Senator DANFORTH. How about with specifications of tank cars and so on and some structural things? Should that be preempted?

Dr. MILLAR. That is a difficult area because the recent problems that have been revealed with the MC 305 and 306 indicate that the Federal regulations are maybe not very adequate. So States and localities are in fact interested in looking into the possibilities of enacting more stringent standards.

Senator DANFORTH. So you don't agree that that should be preempted?

Dr. MILLAR. I guess I would suggest that maybe what States and localities can most appropriately do is take a look at limiting the size of some of the cargoes that come into the cities and really press for some kind of crashworthiness testing of some of the major vehicles.

It is unclear to me right now whether a State or locality has the resources to actually technically determine what the tank truck should look like. But they certainly are interested in the inadequacies of the current vehicles, California being a notable example of that.

Senator DANFORTH. Supposing there was a community in Missouri which the railroad went through. Do you think they should be able to say well, if a railroad goes through our community, and it does, the tank cars have to have such and such specifications?

Dr. MILLAR. No. I think that on the local level that is probably not very workable, and I think that what therefore needs to be done is to follow up on the FRA research about the routing of hazardous rail cars in urban areas and follow up the DOT research about regional flows, and develop regional patterns, as in Dallas-Ft. Worth, where whole regions, including all the little communities, suburban communities, participate in a regional consideration of safety measures.

Senator DANFORTH. Is that what we have now?

Dr. MILLAR. In my view, that is currently allowed under Federal law. It is certainly the philosophy of Federal DOT to encourage that kind of thing. They have just spent a half a million dollars on studies around the country to do it. The framework for it exists in the current Federal law.

Now granted, DOT has been developing, through inconsistency rulings and through regulations, the actual details of that structure. But the framework and the structure for that kind of cooperation exists, and cities and States have shown a willingness to work with it.

Senator DANFORTH. What is the problem, Mr. Harvison? It sounds like everything is OK. Mr. Millar is satisfied, and the local officials who testified earlier don't want any further preemption.

Mr. HARVISON. Mr. Chairman, I believe your original question went to the fact that is there a balance. I would try to respond to that by noting that less than a month ago I just got off the witness stand in the trial phase of the Boston litigation to which Dr. Millar referred. And just to relate a fact, not an anecdote, one of the witnesses at that trial was the fire commissioner of the city of Boston, who in fact had drafted the regulations, had promulgated the regulations, and was responsible for their enforcement.

Now the net effect of the city's limited ban essentially, was to take all hazardous materials transportation and put them on the one specific route that circumvents the city of Boston, route 128. That route is almost entirely out of the city limits. It is entirely out of the city limits. And it goes through a number of jurisdictions that do not have the emergency response capability that could be equated with that of the city of Boston.

On the witness stand, the fire commissioner recognized that there was a problem. He testified to the fact that he was aware of the fact that this hazardous materials transportation corridor on route 128 was being created. He was aware of the fact that an undue burden was being placed upon the citizens and the taxpayers of the communities adjoining Boston. But he didn't care because his prime responsibility was to the taxpayers of the city of Boston.

That, quite obviously, is a situation that we in industry, charged essentially with involving ourselves in interstate transportation, just cannot live with that situation.

The situation in New York City is roughly analogous to it, where various communities who are not prepared for the bulk of hazardous materials transportation must, by virtue of one unilateral action on behalf of a very large jurisdiction, accept the full burden of hazardous materials transportation.

In supporting the coalition's proposal, we have acknowledged that we are willing to work with the communities in coming up with routing and notification plans. It is just that we feel that after numerous trips to the courthouse, and even if we win in Federal court, and we have won in Federal court—we have won one in Rhode Island and we have won in New Hampshire—every time we win in Federal court, we lose in the community. We create enemies. We create hostility. And they will go around the back door to get us some other way.

We just want something codified, a structure that is codified, within which all parties can work.

Mr. MYERS. Mr. Chairman, again your initial question: No, I don't think we have that local-State-Federal partnership, the Government-industry partnership that we want. And I think going beyond the uniformity and the enforcement areas, looking at the emergency response area, one of the main reasons, and I hope I characterize their participation adequately, but as a spokesman for the coalition, one of the main reasons why the State and local governments are in the coalition, why they support the coalition, is that they too are seeking something from this. They are seeking some assured source of funding for emergency response.

Section 402 has taken care of funding for enforcement. Now they want some sort of assured source of funding for emergency response.

You heard earlier this morning from the representative of the National League of Cities saying that they support the fund. I have here an article from the April 15 Washington Post in which it notes that the Northern Virginia Planning District Commission members are suggesting that the State and Federal Governments provide funds to train local emergency response personnel in the handling of potential accidents.

This is what they want. They need the funds to beef up the training of their enforcement people. I don't think we have the partnership, but I think the coalition proposal goes a long way to creating that partnership.

Senator DANFORTH. I don't think you have made a sale, though, to Dr. Millar or to the local officials from whom we heard today.

Mr. MYERS. As I said in my testimony earlier, not everyone will agree with every aspect of our proposal, but the coalition does have tremendous support from the major constituent groups, and we think it is a good starting point for change.

Mr. HARVISON. Just one closing comment. I listened this morning with great interest to the testimony of the gentleman from New Orleans. I kind of felt like I was coming in where I left off. Two years ago I was one of the people that the city representatives called to involve motor carriers, specifically tank truckers, in the cooperative project they have down there. We have done that and we will continue to do that.

But for instance, the city noted in their testimony that they didn't want to create technical blockades by coming up with their own regulations. But they were very, very much interested in maintaining flexibility with regard to routing and prenotification.

And I would respectfully offer the fact that this is the guts of the coalition proposal. All it does is take realistically what appears to me at least to be what the city of New Orleans wants and codifies it.

Dr. MILLAR. I would like to say a word about that, which is that the New Orleans situation is somewhat different from Boston. Most of the traffic that goes through New Orleans, except for the east-west rail traffic, has an origin or a destination point in New Orleans.

Now Boston is a situation—if Mr. Harvison's people went in court, is it going to be on the basis of trying to tell people that it is better for a route to go through the city because there are trained emergency response people there? The fact is that the Federal DOT has taken a look at that case and they said they couldn't tell if the Boston regulations were invalid or inconsistent with Federal law, and the reason is that Boston did do some consultation with the surrounding area, and in fact maybe the route is safer, DOT said.

Commonsense would dictate that a route that does not go through the downtown area might in fact be safer.

It is true that carriers under current law have the responsibility to avoid heavily populated areas. I don't know under what justification anyone would say that it is better to go through downtown Boston than to take a less populated route further out.

But those are exactly the kinds of questions that this whole thing is going to turn on, the very commonsense kinds of questions about safety.

Senator DANFORTH. Do you think this is an irreconcilable conflict, between say Mr. Harvison and Dr. Millar, or is there room for some kind of compromise? Dr. Millar, do you understand the point that Mr. Harvison and others are making? Do you think that there is any basis that they should have for concern about the fact that the municipalities can make transportation impossible?

Dr. MILLAR. Well yes, of course our position has always been that there needs to be some way for localities and States to exercise some safety initiatives, but within a framework of Federal preemption, if necessary, in cases where it gets to be an undue burden.

That is what is in the current law. Congress has already written in the compromises that the coalition is talking about. HMTA is pretty balanced, I think, and that is maybe why Federal DOT is not too sure right now about what kind of provisions they think would help solve this. From what I hear from DOT, many of them think that the compromises are already in there, and the State and local officials can work with them.

Mr. HARVISON. Senator, I think there is only one area that has come up here that is not compromisable, after reviewing my experience, not only in my own profession but also attending the meetings of the coalition.

Dr. Millar has expressed the opinion that technical regulations should be also given to the State and local community—the construction of what is an MC 306 or 307. I would suggest that within industry, we could not compromise on the technical aspects of container standards, or of specification regulations, what is a flammable liquid, et cetera, et cetera.

I would strongly suggest that we in industry could not compromise away our position with regard to that.

Above and beyond that, I would respectfully offer that considering, as Mr. Myers noted, who makes up the coalition, that what we are talking about here is very much of a compromise document. You see industry volunteering fees. You see State and local governments volunteering a degree of preemption. This is the essence of compromise, and that is where we have been coming from for the last 2½ years.

Senator DANFORTH. OK, gentlemen. Thank you very much.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. BILL GREEN, U.S. REPRESENTATIVE FROM NEW YORK

Mr. Chairman. Thank you very much for holding this very important meeting of the Senate Subcommittee on Surface Transportation. During this hearing on the Hazardous Materials Transportation Act (HMTA), I would like to express my views on the transportation of nuclear waste materials through urban and metropolitan areas.

As the U.S. Representative from Manhattan's East Side, I have a personal interest in this important, complex, and controversial subject. I testified before the U.S. Department of Transportation (D.O.T.) in 1981 in opposition to the rulemaking then underway which was designed to allow the transportation of such materials through major urban centers—a rule which overturned strong ordinances which attempted to ensure urban transport safety. Certainly, New Yor City's strong safety-first rules were a prime target for this rule-making procedure.

On February 27, 1984, the U.S. Supreme Court refused to hear New York City's challenge to the D.O.T. regulation which would require the City to open its highways to trucks carrying nuclear waste. This issue has been at the forefront of transportation discussions since before 1976, when New York banned the transportation of such wastes on its major arteries. This was done because the Federal government did not adequately assess the risks of carrying such wastes through an urban area such as New York City. Indeed, when D.O.T. adopted the regulation in 1981, over strenuous objections from a bipartistan group of legislators in the House which included myself, Congressman Ted Weiss of New York City, and the Speaker of the House, it did so without preparing an environmental impact statement, which is required by law for all Federal projects which are expected to have a significant impact on the environment.

The ramifications of the decisions to allow this dangerous transportation situation are enormous. The Brookhaven National Laboratory in Suffolk would resume shipments of radioactive wastes through New York City under the proposed Federal rules. The Shoreham nuclear power plant on Long Island, should it come on-line, would produce the same kind of nuclear fuel rods generated at Brookhaven, and its wast materials would also be transported through the City. When Brookhaven used to ship the wastes through New York, the route ran over the 59th Street Bridge into Manhattan and then went right up 3rd Avenue to the George Washington Bridge. The New York Bureau of Radiation Control has determined that a small release of high-level radiation (such as that released by the type of radioactive materials under discussion here) would cause thousands of deaths, both immediately and as a result of latent exposure. On a national scale, the Environmental Policy Institute has estimated that by the first few years of the 21st century, over 8,500 shipments of radioactive wastes using the interstate highway system will occur annually. Clearly, the use of routes which offer the least possible chances of danger should be used.

In making this ruling, the Department has relied upon statements of technicians and statisticians, and D.O.T.'s officials have argued that there is a "low probability" of an accident or some other type of danger to the public. Yet, we have learned through a wide variety of recent events, such as the Three Mile Island near-disaster and the success of the University of Virginia basketball team, that predictions are only educated guesses and are not guarantees. As I testified before the Department in 1981, we are a government of living and breathing human beings, not a nation of test rats willing to be experimental upon, risking the lives of thousands of people. It is certainly not an unreasonable request by residents of a city to ask that the passage of nuclear wastes through a metropolitan area be restricted. It may cost more to transport the materials around an metropolitan area, but it certainly makes sence to avoid as many dangerous situations as possible. Clearly, this request is not unique—transporting explosives and flammable materials through tunnels and over bridges is prohibited in many locales.

Mr. Chairman, I plan to introduce legislation in the House of Representatives this week which would help to alleviate the fears of urban residents as well as satisfy the needs of the Department of Transportation in ensuring the timely and satisfactory transportation of nuclear waste materials. The bill would require the successful completion of an environmental impact study before allowing of such materials through a metropolitan area. Senator Specter of Pennsylvania has introduced similar legislation, S. 2356, and I look forward to working with you and our colleagues in the Congress in an effort to pass these important bills.

Clearly, it seems sensible that when alternate routes are available which would avoid large metropolitan areas, they should be used. It would not be difficult to plan the logistics of such a route. Although it might be necessary to allow for a slightly slower transport time, such planning would certainly be in our best interest. In addition, it makes sense to use alternative modes of transportation, such as barges on inland waterways, whenever possible. This legislation attempts to design a system which would make this possible without hardship to those involved. Even if the probability of an accident is small, the danger to local residents, and to users of bridges and tunnels, in the event of an accident and leakage, is far too great to allow the passage of such materials on and through them.

We have the argument of precedent on our side. We have the argument of the right to the highest degree of public safety. We have the arguments of public concern and public desire.

Nuclear Waste does exist, and the materials have to be transported to storage and burial sites. But there is no need to bring them through great population centers when it is not necessary to do so. We need to be reasonable. We need to listen to the people. We need to be smart and, above all, to be safe. We need to avoid metropolitan areas and large urban areas—go around us, not through us.

Again, Mr. Chairman, thank you very much for your time and your consideration. I hope to work with you in the future to solve this very difficult problem.

STATEMENT OF HON. TED WEISS, U.S. REPRESENTATIVE FROM NEW YORK

Mr. Chairman and Members of the Subcommittee, I want to thank you for this opportunity to address the critical issue of hazardous materials transportation. I submit this statement for the hearing record.

My personal involvement with efforts to regulate shipments of hazardous materials through densely populated areas dates back to my tenure as chairman of the New York City Council Committee on Environmental Protection. On two occasions, once in 1980 and again in 1981, I testified before the House Public Works Subcommittee on Surface Transportation in opposition to Department of Transportation (DOT) rulemaking designed to overturn strong, safety-oriented state and local laws. New York City's regulatory program, you may recall, was a primary target of that rulemaking. I addressed the same subcommittee last month on this and related issues.

My interest, particularly in the area of federal preemption of non-federal transportation laws, remains high in my role as chairman of the Government Operations Subcommittee on Intergovernmental Relations and Human Resources. In recent years we have witnessed growing conflict in relations between federal, state and local authorities over attempts to attain uniformity in our nation's laws. Uniformity is indeed desirable in many instances. But often, as in the case of New York City, there are unique circumstances. Federal laws and regulations should reflect a sensitivity to valid local concerns.

Two bills which I introduced in the last Congress sought to preserve the rightful role of state and local governments to promote safe transportation of hazardous materials. One would have disapproved DOT's preemptive rulemaking, which I will refer to here by its docket designation, HM-164. The other measure would have prohibited the transport of radioactive cargo through urban areas. It was the latter bill which served as the foundation for legislation reported by the Public Works Committee in the 97th Congress; the substitute amendment offered and passed on the House floor was never considered by the Senate.

The potential for catastrophe that inspired those two initiatives has not gone away. An Environmental Policy Institute study estimated that annual shipments of radioactive materials on the nation's interstate highway system will increase from 312 in 1986 to 8,748 in the year 2004. Independent research by Sandia Laboratories and the New York City Bureau of Radiation Control has determined the number of fatalities—both immediate deaths and latent cancer deaths—caused by even a small release of high-level radiation from a spent fuel cask in a city like New York would be in the thousands.

PREEMPTION AT THE EXPENSE OF SAFETY

The motive of Congress in enacting the Hazardous Materials Transportation Act (HMTA), as expressed in its preamble, was "to protect the nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Yet, when the Department of Transportation (DOT) issued a rulemaking in early 1982 to implement the requirements of this law as it related to radioactive material, the result seemed intended to minimize the inconvenience to commerce by streamlining transportation routes. Safety became a secondary consideration.

HM-164 stipulates the use of "preferred routes," in most instances interstate highways and beltways around cities, to transport large quantity radioactive shipments. The rule was expressly designed to preempt state and local regulations which do not conform to federal laws and regulations.

DOT's interpretation of HMTA paid little attention to the delicate balance between federal, state and local regulatory responsibilities I believe Congress intended to establish. In place of stringent local rules governing the transport of radioactive, flammable, explosive and combustible materials into and through urban areas, DOT offered weak guidelines for routing with virtually no safety provisions. No consideration was given to alternatives to highway transportation. No special dispensation was awarded to non-federal rules providing greater protection to the public without unreasonably burdening commerce.

Proponents of broad federal preemption raise some legitimate points. Uncontrolled proliferation of state and local regulations would indeed be detrimental to commerce. Some local laws do not adequately take into account the effect on neighboring jurisdictions. In addressing those concerns, though, DOT sacrificed the safety priority embodied in HMTA.

New York City's experience is particularly illuminating. Formulated partly in response to a request from the operators of Brookhaven Laboratories on Long Island, the rulemaking allows the firm to truck its nuclear wastes through downtown Manhattan if the route minimizes transit time. The route used by Brookhaven until city officials challenged HM-164 in court ran along the Long Island Expressway through Queens, over the 59th Street Bridge into Manhattan, and then up either Third Avenue or Amsterdam Avenue and over the George Washington Bridge. HM-164 does not require the shipper in this instance to consider the alternate mode proposed by the New York officials, transportation of the wastes by barge around the city.

Litigation between New York City and DOT over this ill-advised rulemaking stretched out over several years. The city carried its challenge to the Supreme Court, which just this past February declined to consider the case. In the wake of that decision, Brookhaven has announced its intention to renew shipments of radioactive fuel on flatbed trucks through the city in the next several weeks. A new route will be used, however, principally along interstate highways through Queens and the Bronx.

New York City is not alone among local governments lacking confidence in DOT's willingness to protect the public. More than 260 new state or local restrictions on transportation of radioactive substances have been proposed since HM-164 went into effect about two years ago. Some 200 state and local jurisdictions have imposed such regulations. Many of those, including a New York City health code provision limiting radioactive transport within the city, provide for greater safety than does HM-164. We are clearly witnessing an effort by local and state authorities to fill a leadership vacuum.

Last month I introduced a package of amendments to the Hazardous Materials Transportation Act which attempt to restore the safety priority. The legislation would also provide state and local governments with additional resources to adequately meet their enforcement and emergency response obligations.

The cornerstone of the bill is language shifting the burden of proof in inconsistency and preemption proceedings from the state and local authority to DOT. The language, based in part of a ruling by a U.S. District Court in New York, creates a presumption in favor of local, safety-oriented regulations which provide a level of protection to the public equal or greater than that provided by HMTA or regulations developed under the act, and which do not unreasonably burden commerce. The intent is to allow local officials to enhance safety by addressing unique situations within their jurisdictions without permitting the proliferation of unwarranted rules.

REGIONAL TRAINING CENTERS AND OTHER PROPOSALS

Needs exist in other areas as well. Section 4 of my bill directs the Secretary of Transportation to establish regional training centers to meet the widespread demand for comprehensive enforcement and emergency response training. This provision was passed by the House in 1981, but the legislation died in the Senate.

The measure directs the instructors, in addition to teaching classes at the centers, to conduct outreach training programs and disseminate information within the communities served. The centers are in no way intended to weaken or eliminate private training enterprises, but simply to fill a clear need for high quality instruction in areas not served by private programs.

Section 5 directs the Secretary to register hazardous materials shippers, transporters and container manufacturers. HMTA authorizes the creation of such a program, but DOT has declined to do so to date. Registration would provide authorities at all government levels with basic essential information—not currently available—for developing and improving enforcement and emergency response programs.

The basic, reliable data that such a registration program could provide is presently unavailable. A recent investigation by Rep. Cardiss Collins' Government Operations Subcommittee on Government Activities and Transportation discovered the federal Bureau of Motor Carrier Safety "finds itself in the peculiar position of being the policeman for the motor carrier industry without knowing the names and locations of all motor carriers." A survey of communities around the country by Mr. Ray Scanlon of the New York-New Jersey Port Authoritiy listed as a major concern the difficulty in obtaining basic information on hazardous materials shipments.

Section 6 of the bill instructs the Secretary to study the most effective, equitable and cost efficient method of imposing a user fee on participants in the registration program. The present fiscal climate has left states and localities with minimal funds for vigilant enforcement of safety regulations and development of emergency response programs. Any fund resulting from this study would help finance those local efforts.

As a Member of Congress respresenting one of the many urban areas which benefit, I am asking the subcommittee to support this vital legislation.

DOT, in issuing HM-164 and failing to take the lead in other areas such as training and registration, has not acted with adequate concern for the health and wellbeing of our citizens. Local authorities should not be forced to permit muncipal streets to serve as thoroughfares for potentially lethal cargo. Common sense dictates that strong safety initiatives should not be automatically rejected for uniformity's sake.

Thank you.

STATEMENT OF JOSEPH T. MCGOUGH, JR., REPRESENTING THE CITY OF NEW YORK

Mr. Chairman, I am Joseph McGough, Commissioner of the Department of Environmental Protection for the City of New York. I am also Chairman of the City's Hazardous Waste Task Force. The Task Force was formed in September, 1982 to coordinate our efforts in the discovery, analysis, control, and disposal of hazardous wastes, and its creation shows the great importance which we place on this area of concern. I am testifying today on the subject of hazardous materials transportation on behalf of the City of New York.

New York City has a long-standing policy of promoting the safety of its citizens by regulating the transportation of hazardous materials through the City. We believe that the transportation of hazardous materials presents a serious environmental and public health issue, particularly in a densely-populated area like New York City, but also in other communities throughout the country.

The proper role of states and local governments in dealing with this serious issue raises fundamental questions of federalism and has long been the subject of debate. When Congress enacted the Hazardous Materials Transportation Act (HMTA) in 1975, we believe it struck a fair compromise among these competing governmental interests. The elements of this compromise as we interpret the Act include:

The primacy of public safety as the rationale for federal regulation of hazardous materials transportation;

A partnership role among federal, state, and local governments in promoting safe transportation of hazardous materials;

Recognition of the legitimate interests of states and localities in regulating to manage the risks to life, property, and the environment which are inherent in the transportation of hazardous materials; and

Recognition of a legitimate federal interest in the national flow of commerce through limited provisions for the preemption of local regulations which are inconsistent with federal requirements.

In light of HMTA's goal to promote safety, minimizing credible risks should be the paramount concern of the Federal Department of Transportation. The City believes that in order to promote safety it will always be necessary for states and localities to play an important role in the regulation of hazardous materials transportation. Consequently, the Department's preemption authority should be exercised sparingly, and in no event should it be used to promote, in the name of uniformity, commercial values at the expense of legitimate local public safety and environmental concerns.

BACKGROUND

Because New York City is the most densely populated city in the country and due to the immense volume of hazardous materials that transit through the City, the Fire Department has found it necessary to restrict the shipment through the City of hazardous materials by means of reasonable routing and curfew regulations. These regulations were developed so that transporters carrying explosives, combustibles, and flammables avoid the most densely populated or vulnerable routes and the worst traffic conditions. In addition, for certain explosive cargoes, we have escort and prenotification requirements. An example of the serious nature of these regulations and the accidents which we are trying to avoid, even when they do not directly cause property damage or affect human health, occurred in 1980 when a tank truck carrying liquefied propane gas in violation of City routing regulations sprung a leak on the George Washington Bridge. This incident resulted in a massive tie-up which immobilized traffic in Manhattan for over seven hours and caused the evacuation of thousands of residents along the route as a precautionary measure in the event of explosion.

In addition to transshipments through the City, we also regulate pickups and deliveries of combustibles, explosives and flammables within the City through a permit system. The permit will contain relevant terms and conditions designed to reasonably minimize the risks of accident. With respect to explosives, this again can include routing and time of day restrictions. We also have certification requirements for drivers making deliveries in the City in order to ensure that they are competent to handle their dangerous loads.

Clearly, the preferable way to handle the risks associated with hazardous materials transportation is to prevent accidents from happening, through adequate regulations and enforcement. However, the City also does have a sophisticated and coordinated emergency response capability for dealing with hazardous materials accidents after they happen. Managing this hazardous materials response plan is a major responsibility of the Hazardous Materials Task Force.

RADIOACTIVE MATERIALS

While the great majority of hazardous materials shipments are regulated under the ordinances discussed above, the most highly publicized City regulation in this area is a Department of Health prohibition on the shipment through the City of spent nuclear fuel and large quantities of radioactive materials. Studies have shown that in an area as densely populated as New York City, a "worst case" release of such materials would result in billions of dollars of economic damages and cancer-induced deaths in the thousands. The City's ban was consistent with existing federal motor carrier regulations which required motor vehicles carrying hazardous materials to avoid heavily populated areas unless there is no practicable alternative. It was also consistent with federal hazardous materials regulations, since no regulations on this matter had been promulgated.

Because all highway routes leading from Long Island pass through the City, the immediate effect of the rule was to require radioactive wastes generated by Brookhaven National Laboratories' Long Island facility either to be stored at Brookhaven or to be barged or ferried around the City. The rule would have even greater importance for the Shoreham nuclear power plant, if it ever becomes operational. Because the plant is also located on Long Island, it would also presumably ship its spent fuel rods by highway through the City. Nationally, the issue of safe routing of radioactive wastes will be of increasing importance as the nuclear power industry enters its fourth decade and the inevitable problem of long-term disposal is faced.

The City's ordinance on radioactive materials transportation is well known because of the long history of litigation and regulatory development which ensued. After determining that the City's rule was not inconsistent with any Federal Department of Transportation regulations because DOT had not acted in this area, DOT underwent a rulemaking which was explicitly intended to strike down state and local rules, particularly New York's, which interfered with truck shipments of high level radioactive materials. The final rule, issued in 1981, was denominated "HM-164." Rather than requiring densely populated areas to be avoided, the rule directs that large quantity shipments of radioactive materials move over "preferred routes" which consist mainly of interstate highways and beltways around urban areas. The rule also explicitly states that it preempts all local and state radioactive materials routing rules if they prohibit the use of highways between any two points without providing a highway alternative.

In promulgating the rule, the Department of transportation refused to consider the possibility that greater public safety could be provided by looking at the alternative transportation mode of barging around urban centers that lack circumferential highways. In May, 1982, the Federal District Court held that the Hazardous Materials Transportation Act and the National Environmental Policy Act required DOT to consider the feasibility of non-highway modes of transport as a factor in reducing the risk of catastrophic accident in a densely populated urban area. This decison was appealed, and in August, 1983, the Second Circuit reversed, determining that while "in passing HMTA Congress intended DOT to use its centralized authority to develop a rational and consistent system of regulations for all modes of transportation," nonetheless, the Act allows, and Congress expected,"that the Department would continue to follow the prior practice of regulating each mode of transportation on an individual basis." Thus, localities and states could be precluded from promoting public safety and environmental protection by requiring the safer of two alternative modes of transportation to be used. The Second Circuit decison was appealed to the Supreme Court, which declined to review the case.

CURRENT LEGISLATIVE ISSUES

During this hearing on reauthorization of the Hazardous Materials Transportation Act, the Subcommittee will again receive testimony from transportaion interests on the need for greater uniformity of regulation. It is undeniable that a proliferation of differing local and state requirements can present an inconvenience, and have an economic cost, for the hazardous materials industry. However, the promotion of commerce should not override legitimate public safety and environmental concerns. The Hazardous Materials Transportion Act is, and should be, primarily a safety statute.

Advocates of greater uniformity have based their arguments not so much on their economic stake as on the assertion that localities who regulate are merely "shifting" risks from one area to another. This is clearly a legitimate issue—surely we would all agree that as a matter of public policy the statute should not promote a system which does not improve the overall public safety. However, "shifting" transportation risks geographically is not necessarily merely "shifting" the same quantum of risk. Particularly in densely populated areas, a contrary presumption seems warranted: routing to avoid heavily populated areas improves public safety. Similarly, shifting transportation of hazardous materials away from highly developed areas with vulnerable infrastructure (such as sewer systems, bridges, tunnels, etc.) provides net benefits to health and property. And in general, localities regulating routing of hazardous materials transportation have reason to believe that they are promoting public safety. The answer to the possibility of conflicting jurisdictional interests in routing is not to preempt local authority across the board in favor of a uniform system or require an elaborate justification of local regulation based on the unwarranted assumption that health and safety benefits are the exception rather than the rule. No information we have seen warrants such a conclusion by Congress.

We support the general philosophy shown in H.R. 4965, sponsored by Congressman Weiss. Section 3 of the bill, in particular, contains language which is intended to clarify the burden of proof in inconsistency and non-preemption proceedings. Under this language, there would be a presumption in favor of the validity of local regulations for the safety of hazardous materials transportation which do not render compliance with the relevant federal regulations impossible. The presumption could be overcome, but the work of doing so would have to be done by the advocates of preempting the local regulations. With this language it would be clear that the statute is what we believe it has been, and was intended to be, all along: a statute designed to promote the safe transportation of hazardous materials.

We also support S. 2356, introduced by Senator Specter. This bill would essentially reverse the Second Circuit's approval of HM-164. It would define any "approval" by the Department of Transportation of highway shipments of radioactive waste materials through a standard metropolitan area as a major federal action requiring an environmental impact statement. Similarly, DOT is required to withdraw HM-164 and issue new regulations after making an environmental and safety assessment of alternative routes for shipment, including alternative modes of transportation such as barges. Thus, the Department of Transportation would have the burden of showing that the New York City ban and the regulations of other cities do not promote safety. This approach has some resemblance to Section 7 of H.R. 3403 as it passed the House of Representatives in the 97th Congress.

Now that the Supreme Court has upheld HM-164, the City can no longer rely on its ban on shipments through the City of radioactive wastes. We certainly agree that the population density of the City and the availability of a potentially safer alternative warrant a legislative solution like S. 2356. However, we would also like to point out that there is a larger issue involved here. The radioactive routing regulation is not the only hazardous materials regulation enforced by the City. As noted, the Fire Department enforces regulations involving routing, curfews, prenotifications, escorts, and driver certification for a variety of hazardous materials shipments. And radioactive routing regulations are not the only hazardous materials transportation regulations which are exercised by cities and states throughout the nation either. We believe that states and localities will always have an important role to play in regulating hazardous materials transportation to reflect local circumstances. While the great population density in New York City is one important and possibly unique local circumstance, there are also many other densely populated areas throughout the country where regulation of hazardous materials safety is necessary, and many other local considerations of traffic, geography, climate, and emergency preparedness, to name a few, which give rise to the need for local regulation. Indeed, it is the very uniqueness of local circumstances throughout the country which makes it imperative that deference be paid to local regulations. It is for this reason that a statutory scheme which preserves the ability of localities to regulate in this area, with the possibility of preemption to prevent burdens on commerce, needs to be maintained.

Over the last three years, considerable discussion has taken place on the federal, state, and local roles in regulating the transportation of hazardous materials. Industry has pursued uniformity of regulations and federal preemption of state and local activity. State and local governments have defended their responsibility to protect the citizens of their communities in response to local needs and conditions. You will be hearing from representatives of the hazardous materials "coalition" which has attempted to develop a legislative proposal that can reconcile these divergent interests. While many organizations have participated in these efforts to varying degrees, little concensus has actually been reached. The coalition has focused its attention on the need for additional enforcement and emergency response capability, and on efforts to determine how greater uniformity in local regulation can be achieved without sacrificing legitimate needs for local variations. These are all very important and legitimate issues. The effort at concensus has centered on the idea that states and localities can gain something by giving up some of their authority to regulate in return for some funding for emergency response and enforcement.

We have several serious concerns about the details of the proposal that we have seen so far. The latest draft that we have seen, dated February 4, 1984, clears up one source of considerable confusion by doing away with the concept of "performance standards." Instead, the new proposal makes it clear that in order to pass muster, state and local routing, prenotification, curfew and other requirements will be judged in terms of certain enumerated criteria. Rather than a simple "codification" of existing case law as the coalition has claimed, the enumerated criteria represent a significant departure from the tests applied by DOT and the courts in determining inconsistency. See the analysis appended to our testimony. Coupled with the redefinition of the purposes of the statute—which we believe would change it from one designed to promote safety to one which is primarily intended to promote commerce over the interests of safety—the new inconsistency criteria, and the burden of showing that they are satisfied, would constitute a quite drastic preemption of current authority to regulate hazardous materials transportation.

On the funding side of the equation, the City believes that establishing a federal funding mechanism for enforcement, emergency response, and cleanup of hazardous materials incidents merits serious consideration. Any such mechanism must not compromise an adequate framework for federal, state, and local regulation. The fund ought to be large enough to make some meaningful contribution to meeting these needs, particularly if it is coupled with any loss of local authority. Ideally, the social costs of hazardous materials transportation should be internalized by making the fund adequate to cover all emergency response, cleanup and enforcement efforts that can be allocated to that activity. In particular, we support funding for enforcement, rather than only for emergency response, as in the current proposal. As stated earlier, prevention of accidents is preferable to cleaning them up after they happen, although of course the City of New York does have an emergency response program. In addition, it is the serious lack of adequate enforcement which has in part forced cities and states to adopt more stringent regulations on curfews, routing and so forth in the first place. Finally, we do feel that regional consultation and participation in rulemaking or development of local regulations will help foster uniformity, and we endorse mandatory regional consultation to the extent practical as a precondition to any new funding for enforcement or emergency response.

We would finally like to note a concern with respect to uniformity in the area of motor carrier safety. In its testimony on S. 2174, the Department of Transportation opposed language designed to provide greater federal preemption in motor carrier safety regulation. In particular, DOT objected to a provision of the bill which would have required a state to carry the burden of showing that a local regulation did not unduly burden commerce. This is an issue which could have some direct bearing on hazardous materials transportation, which is a subset of motor carrier safety. As noted above, the City's ban on high level radioactive shipments through the City is consistent with a motor carrier regulation which states that motor vehicles carrying hazardous materials should avoid heavily populated areas, although that rule is apparently superceded by HM-164 promulgated under the Hazardous Materials Transportation Act. In dealing with motor carrier safety issues, we hope the Subcommittee will be clear in its intentions with regard to hazardous materials transportation, and that it will reserve its action on the latter for consideration of the Hazardous Materials Transportation Act. It may be that the rule on avoiding heavily populated areas should be affirmed by Congress in both areas of regulation.

I appreciate this opportunity to address the Subcommittee on this important subject and would welcome the opportunity to answer any of your questions.

ANALYSIS OF COALITION'S PROPOSED INCONSISTENCY CRITERIA

Section 404(b)(3) of the February 24, 1984 Coalition proposal provides:

No state or local government or authority may adopt or enforce any requirement relating to *notification, or routing (including time-of-day restrictions and local bans)* of hazardous materials movement into, through, or out of its jurisdiction *except in accordance with the inconsistency criteria set forth in Section 112(b)(2)(a)-(g) of this title*. [emphasis supplied].

The criteria which the Secretary shall consider are set forth in § 407(b)(2) as follows:

(a) Inhibits compliance with this title or any federal law;

(b) Imposes an undue burden on interstate commerce;

(c) Is unnecessary to the enhancement of safety in transportation;

(d) Should be applied nationally rather than locally;

(e) Poses an obstacle to the accomplishment and execution of the purposes of this title;

(f) Is unnecessary to address a unique local circumstance; and

(g) Poses an undue burden on the safety of citizens of other jurisdictions through which the hazardous materials may be transported.

Rather than a simple codification of existing case law as the National League of Cities or the "coalition" has claimed, the enumerated criteria represent a significant departure from the tests applied by DOT and the courts in determining "inconsistency".

In 49 CFR § 107.29(c)(1979), DOT set forth the standards to be applied in inconsistency proceedings as follows:

(1) Whether compliance with both the (State or local) requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the (State or local) requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion is the so-called dual compliance or direct conflict test and concerns those State or local requirements that directly conflict with Federal requirements: i.e., compliance with the State requirement causes the Federal requirement to be violated and vice versa. *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373

U.S. 132, 142-143 (1963). The second criterion relates to those State or local laws that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the [HMTA] and the regulations issued under the [HMTA]." *Hines* v. *Davidowitz,* 312 U.S. 52 (1941). The Supreme Court recently reaffirmed these two principles in two preemption cases, *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978), and *Jones* v. *Rath Packing Co.,* 430 U.S. 519, 525-526 (1977).

In *City of New York* v. *Ritter Transportation, Inc.,* 515 F. Supp. 663 (1981), affirmed *sub nom., National Tank Truck Carries* v. *City of New York,* 677 Fed. 2d 270 (2d. Cir. 1982), the Circuit Court of Appeals upheld the City's routing and curfew requirements for hazardous gases against a claim that they were preempted by the HMTA and federal regulations adopted pursuant to the HMTA. In rejecting the defendants' claim that the Fire Department's regulations were preempted by the HMTA, the district court noted:

> It is clear that the underlying purpose of the federal regulations, and of the statutory provisions under which they were promulgated, was to ensure protection against the risks to life and property which are inherent in the transportation of hazardous materials. See 49 U.S.C.A. § 1801. The purpose of 49 C.F.R. § 177.853(a), in requiring expeditious movement, was not to speed transportation for its own sake, but to protect the environs from unduly prolonged exposure to risks of fire and explosion. This policy is expressed even more forcefully in 49 C.F.R. § 397.9 which forbids the carrying of hazardous material through heavily populated areas except where no practicable alternative exists. This regulation expresses a strong presumption against transportation of hazardous materials through large cities for obvious safety reasons.

Against this backdrop, it is clear that the inconsistency criteria set forth in Section 407(b)(2) represent a significant departure from and expansion of the two-pronged test cited above. First, instead of a "direct conflict" test, the "coalition" substitutes the more amorphous, "inhibits compliance with this title or any federal law." By this standard, co-existence of federal and state regulations is virtually impossible since it is difficult to conceive of any state or local regulation that could not be said to "inhibit" compliance with federal law and therefore be labelled as inconsistent.

Second, it should also be pointed out that in its inconsistency proceedings DOT only considered the question of statutory preemption and left issues relating to burden on commerce to the courts. (See IR-5, *Ritter Transportation Inc., et al.,* v. *City of New York,* Nov. 10, 1982, at p. 6.) By listing subdivision (b) as one of the enumerated factors, DOT is now empowered to consider burden on commerce issues as a test of inconsistency.

Third, subdivisions (d) and (f) appear designed to facilitate finding legitimate state and local highway safety requirements "inconsistent" with federal law on the pretext that they should be applied nationally rather than locally or are unnecessary to address a unique local circumstance. In the past, local highway safety regulations were entitled to great deference by the courts and presumed valid. The courts would weigh the local safety interest served by the regulation against the degree of interference with interstate commerce. As long as the benefit was not illusory, the Courts would rarely strike down the local regulation. See *Raymond Motor Transportation* v. *Rice,* 434 U.S. 429 (1978). Subdivisions (d) and (f) remove that presumption of validity and put the onus on local government to validate their regulations even though local government is best suited to determine when unique local circumstances require specific regulatory action. This will undoubtedly result in more states and localities seeking waivers of preemption in order to continue to enforce their requirements. In addition, it is obvious that localities sometimes regulate precisely because adequate national regulations are not available. To prohibit localities from doing so is clearly a major change in the law.

Fourth, the references in Section 402 subdivision (4) to "a nationally uniform regulatory program", makes it much more likely that a reviewing court will find state or local regulations inconsistent with the stated uniformity purposes of the bill as amended.

Fifth, under subdivision (g) of § 407(b), unless a state or locality can show that its local requirement does not pose an undue burden on the safety of citizens of other jurisdicitions, it will be found inconsistent. While consultation with affected local jurisdictions to the extent practical can help reduce jurisdictional conflicts and avoid regulations which do not promote overall safety, paragraph (g) could go far beyond this in requiring localities to hire contractors to perform sophisticated risk assessments in an attempt to satisfy DOT that their regulations are valid. In the absence of convincing evidence that local regulations are creating greater risks in neighboring localities, imposing this burden is unwarranted.

In sum, the new coalition proposal clearly tends to impose a nationally uniform system of hazardous materials transportation at the expense of state and local control over highway safety matters.

STATEMENT OF U.S. DISPLAY FIREWORKS ASSOCIATION

Mr. Chairman, for over one-hundred years the one-hundred manufacturers and distributors of Class-B fireworks, who deliver their products to the many local governments for the Fourth of July and other patriotic celebrations, have done so without mishap. I run one of these businesses, as has my father before me in this country, as have three generations before him in Italy.

Years ago when hazardous materials transportation laws were passed by the Congress, we understood why we could no longer ship our products to market by air and rail. Unfortunately, those laws also made carriage of Class-B materials unattractive and burdensome to truck lines. So we swallowed hard when we had to buy our own trucks to deliver to our customers.

However, for the last several years, Mr. Chairman, interpretation and enforcement of Federal regulation (but not state regulations) have made it almost impossible to efficiently and cost effectively get the products of our small industry to market. With the cost of complying with Federal transportation regulations and bureaucratic paperwork mounting, and when "safety" regulations keep our trucks on the highway three days when we could deliver in one, many companies have found it almost impossible to stay in business on a national level and have had to restrict their sales to customers within their own state. Now, cities and other customers are often forced to buy bogus and unsafe foreign products. These products are all too often used under unsafe conditions due to their lack of quality control, insufficient propellant and other technical defects which are characteristic of foreign products.

Mr. Chairman, we just can not believe that the Hazardous Materials Transportation Act was meant to bring significant hardship on a segment of the U.S. industry under the mistaken label of safety; all the while violating true safety and encouraging evasion of the various statutes which are being discussed by this committee today.

In order to survive as Class-B explosive manufacturers and distributors, we have formed the U.S. Display Fireworks Association. We now ask Congress for help in halting the overzealous regulation which threatens our existence.

Again Mr. Chairman, not one incident or mishap involving Class-B commercial fireworks is known to have occurred on U.S. highways. As professional specialists, we have labored long and hard to maintain that safety record. The problem is not how we manufacture or how we package our products for delivery over the highways. The problems that are pricing our companies out of the market and infact encouraging importation of unsafe foreign products are, for example: driving time limitations, qualification of personnel, supposed safety conditions while our trucks are forced by regulation to lay over in route, and other such rules. These only delay and hinder fast and safe delivery of our products to our customers.

Our record has shown that we can achieve safety and do so in the public interest. Perhaps our products are best known when the public sees Fourth of July fireworks displays on the city mall lawn. That same public interest has always governed the care which we have taken in transporting our products on the highway and, incidentally, their safe use on the Mall here in Washington, D.C. if such displays can be delivered at all.

As you may know, Class-B explosives include military explosives. Therefore our commercial products are classified along with defense materials. Perhaps commercial displays should be categorized separately thereby allowing relief from unrealistic regulation for our industry.

The U.S. Display Fireworks Association would very much appreciate any relief this Committee can give us. Thank you for the opportunity of submitting this statement.

STATEMENT OF THE ASSOCIATION OF AMERICAN RAILROADS

At its April 24 hearing on the reauthorization of the Hazardous Materials Transportation Act, the Committee heard testimony from several witness in support of a proposal from the so called "Hazardous Materials Coalition." the railroad industry strongly opposes the proposal of the Coalition. A detailed discussion of the Coalition's proposal follows, but first we present some background information on the industry's safety record and continuing efforts to improve that record.

HAZARDOUS MATERIALS TRANSPORTATION INCIDENTS

While seventy percent of the transportation of hazardous materials takes place on railroads (excluding petroleum), less than ten percent of the hazardous materials transportation incidents are railroad incidents. In 1982, the railroads transported approximately 901,000 carloads of hazardous materials. There were only sixty-three releases from railcars resulting from accidents, representing seven one-thousandths of one percent of the 901,000 hazardous materials carloads.

The hazardous materials record of the railroad industry is impressive and still improving. When we testified in 1981 before this Committee on this subject, we noted that in 1979 there were 228 injuries related to the transportation of hazardous materials by railroad and no deaths. In 1980, there were two deaths when two members of a train crew were killed in a derailment resulting from a mudslide and the subsequent puncture of a tank car of anhydrous ammonia. It is gratifying that we can report there have been no deaths since that incident. Last year there were only 36 injuries associated with the transportation of hazardous materials.

These statistics paint an accurate picture of railroad hazardous materials transportation incidents. Despite the publicity that railroad accidents receive, the railroads are transporting hazardous materials safely.

SAFETY IMPROVEMENTS

The railroads have not been complacent. Rail operations, given the nature of the industry, involve some risks and the industry is striving to reduce those risks. The record amounts of money spent in recent years by the railroads on equipment and maintenance have had an extremely beneficial impact on rail safety. The AAR itself has undertaken several efforts which will improve safety. A discussion of these efforts follows.

Track Train Dynamics

Currently, one of the most comprehensive research programs in the railroad industry is Track Train Dynamics, begun in 1972 and supported by FRA, individual railroads, the railroad supply industry, the Transportation Development Agency of Canada, and the AAR. This program has developed a set of guidelines for train handling that describes the best way to maintain a train in a dynamically stable condition, given weather conditions, terrain, the length of a train, and the distribution of weight in the train. These widely adopted guidelines have eliminated a large number of derailments. This program has also resulted in procedures and analytical models for the investigation of accidents, fatigue guidelines for car structure components, and prototypes of dynamically stable covered hopper cars.

Facility for Accelerated Service Testing

The Facility for Accelerated Service Testing, or FAST, is a 4.8 mile loop of test track operated by the AAR in Pueblo, Colorado. FAST enables AAR to study railroad equipment under experimental conditions, sometimes ten times as intense as conventional railroad operations. FAST provides an excellent opportunity to compare equipment. FAST operations have resulted in the spotting of deficiencies in equipment prior to the use of the equipment by railroads and opportunities for utilizing advanced technologies.

The Hazardous Material Information System

The AAR has initiated a program to develop emergency response, containment, mitigation, cleanup and disposal guidelines for those hazardous materials transported frequently by railroads. The program includes the development of commodity specific emergency action guides, computerized information to aid in the selection of the best measures to take at a specific emergency scene, a medical reference manual containing information for physicians treating those exposed to chemicals, and a hazardous materials data base with information on health hazards, protective clothing, and pollution problems.

The Inter-Industry Task Forces

In the late 1970's an Inter-Industry Task Force on Rail Transportation was formed. The task force created a program for presentation to fire fighters and others involved in emergency response. This program, "Recognizing and Identifying Hazardous Materials," helped prepare local emergency response forces. Prepared by shipping and transportation companies without government funding, it was shown to over 150,000 people. Today, individual railroad companies continue to present emergency response information to fire fighters and other local officials.

The success of this task force led to the formation of a permanent inter-industry working group which will suggest further improvements in the safe transportation of hazardous materials and the handling of spills. The Association of American Railroads (AAR), the Chemical Manufacturers Association (CMA), and the Railway Progress Institute (RPI) began work on this task force in June 1982 to advance the knowledge and safe practices associated with hazardous materials.

This new inter-industry initiative is designed to consolidate and advance prior accomplishments and to address additional issues that will lead to safer transportation of hazardous materials. Three major areas of study have been identified:

—Accident and Release Prevention;
—Accident and Release Response;
—Information Program.

Projects the task force is sponsoring under the Accident and Release Prevention category are divided into two areas: non-accident release prevention and accident release prevention. A review of data on non-accident releases is bring conducted to identify areas where action can be taken to prevent leaks and splashes of materials from tank cars. Development of a pre-trip car inspection program for shippers is also underway. Data on accidents involving releases of hazardous materials are being compiled to pinpoint areas for further improvement in containers and handling procedures.

Under the general heading of Accident and Release Response, several key projects are underway. Concerns in the area of chemical data and response information are being addressed Projects are underway to review emergency information needs. Possible improvements to the very successful CHEMTREC program are being considered along with other information sources such as the AAR Hazardous Materials Information System discussed previously.

Accident notification and response procedures are being analyzed for ways to improve the overall response performance. Incident reporting and communication networks are being reevaluated for possible improvements. Better, faster, and more uniform response actions and safety measures are being addressed by the task force along with the potential for more special product mutual help teams like the CHLOREP team sponsored by the Chlorine Institute.

Accident site management is also a major concern. The question of who is in charge is often the result of the lack of preplanning involving the community and other first-response parties. It can result in unnecessary delays in accident response actions that are costly and dangerous. Because of this, the task force is addressing this problem with particular emphasis.

Information programs are the third area of activity by the Inter-Industry Task Force. This group plans to participate in and encourage the development and use of cost-effective safe transportation, packaging and distribution methods, equipment, facilities, and practices, and improved communication among the industrial and public communities. Another communication method encouraged by the task force is strong industry participation in regularly scheduled hazardous materials spills conferences.

An effort in the area of public emergency preparedness is also underway. A community contingency planning package is being considered for development. This would include training workshops and a performance evaluation procedure. Measures to deal with sabotage and terrorism are also being considered since some incidents have occured as a result of these dreadful tactics.

Such efforts clearly demonstrate that the rail transportation, chemical, and railway supply industries are committed to the objective of making hazardous materials transportation even safer than it is today, and to promote greater public awareness and safer, more effective response capabilities.

Tank Car Improvements

The major safety-related project of the railroad industry—in fact, the most extensive freight transportation safety study ever undertaken by private companies—has been one dealing with pressurized tank cars. This cooperative program involving the AAR, the Railway Progress Institute (RPI), and the Federal Railroad Administration (FRA) was started in 1970.

Based on recommendations that developed out of the project, the AAR has required since January 1979 that all new tank cars be fitted with shelf-type couplers. DOT issued regulations in 1978 that required all in-service Type 112 and 114 pressurized tank cars to be retrofitted with these couplers. Type 112 and 114 tank cars were also retrofitted with head shields and those used to transport flammable compressed gases with head shields and specified thermal insulation.

Shelf couplers are designed to resist disengagement in a derailment and prevent the accidental "spearing" of a tank car by an adjacent car. The head shield also protects against spearing identified as a major cause of tank car ruptures in derailments.

To minimize the potentially disastrous effects of fire leading to an explosion of hazardous materials, thermal insulation with jackets and thermal insulation spray-on coatings have been developed.

Through Docket No. HM-174, the Materials Transportation Bureau (MTB) is requiring that new types 105 and 111 tank cars used for the transportation of ethylene oxide and flammable compressed gases be similarly protected. In that docket, DOT also mandated that all tanks cars be retrofitted with shelf couplers by March 1, 1985. In Docket HM-175 the railroads supported MTB proposals to install head shields and thermal insulation on existing types 105 and 111 tank cars carrying certain products.

In another effort to ensure the safe transportation of hazardous materials in railroad tank cars, the AAR has adopted a requirement that tank cars with bottom fitting or outlets be protected to reduce the possibility of product loss in an accident. A retrofit schedule, taking into account the relative degree of hazard posed by various commodities, has been developed. Tank cars transporting commodities assigned a high hazard rating must be retrofitted first. All cars must be retrofitted by the end of 1990.

The Bureau of Explosives

The AAR's Bureau of Explosives was established in 1907 to promote the safe handling and transportation of hazardous materials, to collect, analyze, and make available information on hazardous materials, and to provide emergency assistance to its members. Its Washington, D.C., headquarters is staffed with experts in the loading of railcars, tank car design and construction, chemistry, and environmental matters. Supporting the headquarters staff are seventeen inspectors located throughout the United States and Canada and a laboratory with three chemists. The inspectors audit railroad facilities and physically check railcars to ensure compliance with hazardous materials regulations. Each year the inspectors also visit at least 500 plants where hazardous materials are shipped to ensure that hazardous materials are properly prepared for shipments. At the Bureau's laboratory chemicals are tested to determine their proper hazardous materials classification, materials from derailments are analyzed, and risk analyses performed.

Other functions of the Bureau include the review of applications for approval of plans to construct, alter, or repair tank cars, assistance at accident sites, and the publication of books, pamphlets, and posters on hazardous materials.

THE PROPOSAL OF THE HAZARDOUS MATERIAL COALITION

The proposal of the Hazardous Materials Coalition stems from erroneous assumptions about the hazardous materials transportation industry, a lack of analysis about what needs to be done in the industry, and interests unrelated to the safe transportation of hazardous materials by rail. The proposal should be rejected.

What is the Coalition's Proposal?

The Coalition proposes that: (1) DOT be specifically required to promulgate routing and notification regulations which would permit state and local routing and prenotification schemes; (2) a registration scheme with an annual registration fee be implemented; (3) the proceeds from the fee be placed in a trust fund for distribution to state and local governments for use in emergency response programs; and (4) DOT adopt a uniform accident reporting system. Each of these proposals should be rejected.

Routing and Prenotification

Currently, section 105 of the Hazardous Materials Transportation Act (HMTA) authorizes DOT to establish regulations governing any safety aspect of hazardous materials transportation, specifically including routing. The Coalition's proposal goes further and would require DOT to promulgate "performance standards" governing the routing of hazardous materials and notification systems. The proposal actually contemplates time-of-day restrictions and local bans of hazardous materials shipments. Insofar as the railroad industry is concerned, this proposal is infeasible.

In March of 1982 the Transportation Systems Center under the direction of DOT's Research and Special Programs Administration published a study entitled "Aggregate Effects of Rerouting Hazardous Materials Railroad Shipments." That study estimated what the hazardous materials flow patterns were for the U.S. railroad system in 1977 and then hypothetically altered these patterns in two ways to avoid populated areas. One pattern kept the same junctions between railroads so that the market share of railroads would not be affected, but used different routes within an individual railroad system. The other pattern ignored existing junctions. Accident and casualty rates were then computed for these alternative routes.

The study concluded that there would be no advantage to rerouting railroad shipments with existing junctions maintained because the advantage of reduced population exposure would be counteracted by the resulting circuity in shipping patterns and diversion of traffic to lower quality track. Rerouting with new interchange points would significantly reduce casualties, the study noted, but at a cost of extreme changes in railroad market shares. These findings were based on data from 1976 to 1978. Since the industry's safety record has substantially improved in recent years, any benefits from rerouting postulated by the study are overstated. In view of the reduction in the number of injuries associated with rail transportation of hazardous materials, the safety benefits from rerouting would be minimal (the study hypothesized 240 annual hazardous materials casualties, while in 1982 there were only 36 injuries and no deaths). Furthermore, the study did not include an analysis of the extent to which there would be a diversion of hazardous materials traffic from railroads to less safe modes because of the additional costs and increased transit times resulting from circuitous rerouting.

Interestingly, the study stated that the expected number of casualties could be reduced more by upgrading 120,000 miles of track to FRA Class 4 than by rerouting. The cost to upgrade 120,000 miles of Class 1, 2, and 3 track to Class 4 would exceed five billion dollars.

The Coalition's bill would also require that there be a notification system, quite possibly a prenotification system. A prenotification system would provide no benefits to the public while imposing a great burden on the railroad industry.

Railroads handle hundreds of hazardous material shipments every hour of every day. Frequently, railroads do not know in advance what materials they will be receiving from a shipper, a connecting railroad, or a trucking company. The requirements of advance notification would result in entire trains being held at interchange points or in yards pending notification. The delay of trains would be counterproductive from a safety viewpoint as illustrated by current regulations which prohibit the necessary delay of hazardous materials cars.

A prenotification system would not provide local communities with useful information. Since problems with railroad hazardous materials shipments are so rare, communities would do nothing when notified of a shipment. Exactly what action they would wish to take is unclear. If an accident occurs, hazardous materials shipments can be identified quickly through waybills accompanying the shipments. A prenotification system is thus of no benefit in identifying hazardous materials shipments. The Coalition has proposed a system which is infeasible and would be of no benefit even if it was practical.

The Trust Fund

It has been asserted at Coalition meetings that industry is not doing its fair share insofar as emergency response is concerned. The trust fund would supposedly remedy this problem by taxing industry and using the proceeds to fund state and local emergency response efforts. This proposal is unfair and is based on both erroneous assumptions and a lack of information.

The railroad industry has devoted substantial resources to emergency response. As mentioned previously, AAR is in the process of developing a hazardous materials information system which will include commodity specific emergency action guides, computerized information to aid in the selection of the best measures to take at a specific emergency scene, a medical reference manual containing information for physicians treating those exposed to chemicals, and a hazardous materials data base with information on health hazards, protective clothing, and pollution problems. We've discussed the program entitled "Recognizing and Identifying Hazardous Materials," created by the first Inter-Industry Task Force on Rail Transportation. The program was shown to over 150,000 people involved in emergency response, such as fire fighters, and today individual railroad companies continue to present emergency response information to fire fighters and other local officials. The current task force is studying emergency information needs, accident site management, and the possible preparation of a community contingency planning package. The AAR's Bureau of Explosives publishes books, pamphlets, and posters on hazardous materials.

Most importantly, when a hazardous materials accident occurs, the railroads are quick to respond. The railroads do whatever is necessary. They have to, for when an accident occurs it is on railroad property and affects railroad personnel and operations. The recent accident in Livingston, Louisiana, is instructive, because the affected railroad responded promptly and the accident was handled properly.

Finally, railroads pay taxes where they operate. Railroad operations demand fixed facilities, and taxes are paid on these fixed facilities (e.g., real property taxes are assessed on rail yards and rights-of-way, and personal property taxes are assessed on ties and other railroad equipment). It was asserted at Coalition meetings that transportation companies do not contribute to the coffers of the states or localities in which they operate even though those governments must be prepared for transportation incidents. This is not true insofar as the railroads are concerned.

Thus, one of the central premises of the trust fund concept, that transportion companies are not contributing their fair share to emergency response efforts, is clearly false when applied to the railroad industry. The railroads have lived up to their responsibilities and should not suffer if others have not.

A very troubling aspect of the trust fund proposal is that no information has been made available on how the money will be spent. In fact, there has been no analysis by the Coalition of what the money should be spent on. There has been no discussion of whether a community of one-thousand with one railroad and no highways passing through needs a multi-million dollar response system or merely a fire force educated on what it should do if a hazardous materials incident occurs. How can one set up a trust fund without a discussion of the use to which it will be put? How can one determine the proper size of the fund and the size of the fee that will be imposed if there is no analysis of how the money will be used? Frankly, it is appalling that such a scheme is being proposed with so little serious thought being given to what is actually needed.

Registration

Apart from being a tool to impose a registration fee, registration serves no purpose. Indeed, the HMTA currently gives DOT the authority to implement a registration scheme, but wisely that authority has not been exercised.

Fee Preemption

We oppose the Coalition's proposal on fees (and permits) because of inadequate preemption of state and local fees. Railroads should not be subjected to a multitude of local hazardous materials fees. The cumulative effect of many fees could constitute a burden on interstate commerce and thereby constitutes a marked departure from the current philosophy of the HMTA. the Coalition, however, would allow any entity within a state receiving trust fund money to impose its own fee as long as it could demonstrate that the fee is needed for emergency response purposes and that adequate funds are unavailable. What a local government should do insofar as emergency preparedness is concerned is a matter being debated. Absent agreement on this issue, a locality will easily show that it needs money. This bill does not offer substantial protection against the possibility that many hazardous materials fees will be imposed on railroads.

Uniform Accident Reporting

Railroad operations are unique. The information that is included in railroad accident reports reflects the information that would be useful in studying railroad accidents. The concept of a uniform accident report is absurd. No one has substantial compliants about the current railroad report.

Furthermore, the railroads should only have to submit one report, as they currently do. The Coalition's proposal would permit a system under which reports would have to be filed with the states. No reason has been identified for changing the current railroad reporting system under which the Federal Railroad Administration distributes railroad accident reports to the states when they need them. There is no justification for burdening the railroads with additional reporting requirements.

CONCLUSION

Improvements can be made in the hazardous materials transportation industry. Unfortunately, the Coalition's proposal would not result in any improvements. The proposal demonstrates a lack of knowledge about the railroad industry and is counterproductive. It should be rejected.

STATEMENT OF THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS

On October 25, 1983, representatives of state and local governments and industry associations submitted to the subcommittee chairman, Senator John C. Danforth, proposed amendments to the Hazardous Materials Transportation Act. Since that time, the amendments have been revised again. The National Association of Towns and Townships (NATaT) would like to take this opportunity to comment on the provisions as updated in the spring of 1984.

The National Association of Towns and Townships participated in meetings with government and industry association representatives for over one year. As one of a few associations representing elected local government officials during those discussions, the National Association of Towns and Townships represents the interests of elected officials from over 13,000 towns and townships nationwide.

The vast majority of NATaT's members serve communities with a population of 25,000 or less. Therefore, the association focuses on those issues that are either of immediate importance to towns and townships or have the potential to impact the ability of towns and townships to perfrom their duties. Promoting the safe transportation of hazardous materials falls into the latter category.

In February, 1984, the NATaT Board of Directors met and discussed the revised amendments to the Hazardous Materials Transportation Act. As a result of that meeting, it was determined the the National Association of Towns and Townships could support the amendments if certain modifications were incorporated to address the specific concerns of small local governments, in particulr towns and townships. NATaT also recommends that an effort be made to clarify the relationship between certain provisions in the amendments. That the amendments were revised countless times has contributed to some confusion as to the intent of some of the sections.

In summary, the National Association of Towns and Townships supports the following concepts in the Hazardous Materials Transportation Act Amendments based on our understanding of the current legislation:

Purposes

To promote public safety by providing increased coordination and greater consistency among laws and regulations;

To assist state and local governments to play a major role in preventing accidents by adopting the enforcement of certain federal regulations;

To provide greater assistance to state and local governments in responding to accidents through training, technical assistance, and planning grants; and

To provide for a nationally uniform regulatory program.

Regulations

The Secretary of the Department of Transportation (DOT) shall issue regulations for the safe transportation in commerce of hazardous materials.

States and localities may adopt and enforce the regulations.

No state or local government may adopt or enforce a hazardous materials licensing program.

No state can ban the transportation of hazardous materials. (Does not include *waste.*)

The U.S. Department of Transportation must adopt inconsistency requirements. State, local, or authority requirements shall be determined to be inconsistent based on whether the requirement:

A. inhibits compliance with federal law;
B. imposes an undue burden on interstate commerce;
C. is unnecessary to the enhancement of safety in transportation;
D. should be applied nationally, not locally;
E. poses an obstacle to accomplishing this title;
F. is unnecessary to address unique local circumstances; and
G. poses an undue burden on safety of citizens of other jurisdictions through which the hazardous materials may be transported.

Enforcement

State and local governments may levy penalties or enforce requirements as long as the penalties are consistent with the federal regulations.

Funding

The Secretary of the Department of Transportation shall establish a program to register shippers and carriers of hazardous materials and sellers of hazardous materials containers. Initial annaul fee will be $50.00.

The fee will be graduated in two years to not less than $100 nor more than $1,500 per registration per year.

After a study, the Secretary of DOT can also impose a fee of $50.00 on sellers of containers.

Prevention and Emergency Response

All fees will be held in a Hazardous Materials Transportation Emergency Response Fund.

Funds will be available to assist state and local governments in developing and implementing emergency response programs. Eligibility criteria shall include:

Designation by state of a lead agency;

Evidence state has initiated a state-wide emergency response plan;

Agreement that the state will assume responsibility for assisting local governments in hazardous materials emergency response and planning;

Agreement that some percentage of the funds will be passed through to local governments;

Establishment of an emergency response coordinating council consisting of representatives of state and local governments and industry;

Demonstration that the state plan has been developed with industry and local governments.

Funds will be allotted to states based on a formula with five hundred guidelines (highway mileage; railroad track mileage; number of commercial vehicles over 10,000 lbs.; miles traveled by commercial vehicles over 10,000 lbs.; 1980 population.)

The Secretary of the Department of Transportation shall undertake a study to determine the traffic flow of hazardous materials.

The Secretary shall develop certification procedures for training programs.

The National Association of Towns and Townships believes that the basic concepts put forth in the proposed amendments to the Hazardous Materials Transportation Act are sound. The association does believe, however, that the specific needs of smaller local governments should be addressed in the amendments for two important reasons. If the legislative framework outline in the preceding pages is put in place, towns, townships, and small governments will be faced, not only with assuming the burden of proof in justifying whether or not a local requirement is inconsistent with federal regulations but also with the prospect of competing against much larger and more sophisticated governments for access to state prevention and emergency response funds.It may be difficult to comprehend the immense burden that passage of the amendments could potentially impose on towns, townships, and other small local governments without understanding the nature of town and township government. First, such local governments do not have grantsmanship expertise that is in any way comparable to large cities or counties. Second, many towns and townships will have only a part-time elected official with no professional staff. Third, contrary to industry opinion, most local government officials do not know a lot about hazardous materials, including the potential hazards involved in transporting them. Fourth, towns and townships are responsible in every aspect for many road systems over which hazardous materials traffic occurs, including access to interstates. Last, many small local governments are served by volunteer fire departments.

To address the specific needs of small local governments, the National Association of Towns and Townships urges that the following provisions be added to the amendments:

—specific consultation by the state of town, township, and other local government representatives of communities with a population of less than 25,000 in developing any hazardous materials emergency response plans.

—an increase of 10 percent from 50 percent to 60 percent in the amount of hazardous materials emergency response trust funds passed through to local governments in recognition that local governments will assume the primary burden of initial response in most emergencies.

—the inclusion of a set-aside provision mandating that a certain percentage of the hazardous materials trust funds will go to governments with a population of 25,000 or less.

—a provision that allows the U.S. Department of Transportation to revise the registration fee procedure if it determines that additional funds need to be raised.

In addition, the National Association of Towns and Townships believes that report language should be included that impresses upon the U.S. Department of Transportation the need to ensure wide dissemination and explanation of the inconsistency requirements during and upon completion of the regulation writing process. Current efforts by the Department to reach and address the needs of small local governments are not adequate enough to guarantee that the governments confronted with hazardous materials traffic will learn of the existence or understand the impact of the inconsistency requirements. NATaT agrees that a certain degree of intergovernmental consistency is needed to promote safe transportation habits. The association does not agree that it should be the responsibility of town and township officials to become informed about such federal initiatives on their own.

This concludes NATaT's statement. The association would like to thank the Senate Subcommittee on Surface Transportation for its review of our concerns and in particular, Chairman Danforth, for his continued support and understanding of the needs of towns, townships, and small local governments.

The National Industrial Transportation League,
Washington, D.C., April 24,1984.

The Hon. John C. Danforth,
Chairman, Subcommittee on Surface Transportation, U.S. Senate, Washington, D.C.

Dear Chairman Danforth: The National Industrial Transportation League would like to take this opportunity to present the views of shippers on the reauthorization of the Hazardous Materials Transportation Act (P.L. 93-633). We respectfully request that these comments be made part of your April 24 hearing record.

While we do not have any recommendations on specific funding levels for the upcoming fiscal year, the League is deeply concerned about resolving the controversies surrounding the regulation of these economically important commodities as they move in interstate commerce. The League has been part of the Hazardous Materials Transportation Coalition's efforts to devise consensus legislation should be strongly commended for this endeavor. While unaminity was not possible, the coalition was able to achieve a degree of agreement previously thought unattainable.

The League supports efforts to clarify the differing federal and federal/state roles in assuring the safe transportation of these commodities. We agree that the federal government should have sole jurisdiction over regulatory compliance matters, including documentation, marking, packaging, labelling, and placarding. We also agree that states and localities should have clearer guidelines as to when they may exercise their authority in sharing jurisdiction with the federal government. Specifying what criteria must be met to secure a waiver from federal standards should greatly assist in these endeavors.

The League takes no position on the establishment of a federal registration and fee program to privately fund states' emergency response training programs. Shippers are deeply committed to assuring the highest degree of safety in the movement of these commodities. This commitment is evidenced by the host of corporate and industry-wide education, training, and response programs.

Shippers are divided on this issue because many of them believe that improvements in existing programs would more effectively meet the states' needs. They would urge that the creation of a special federal program be carefully studied before incorporated into legislation, and that study be conducted by a broad cross-section of experts, such as the National Hazardous Materials Transportation Advisory Committee, which is being created within the Department of Transportation.

The League thanks you for the opportunity to present the views of shippers, and looks forward to working with you and your staff to assure that we achieve our mutual goal of safe and efficient national truck transportation system.

Sincerely,

James E. Bartley,
Executive Vice President.

Tri-State Motor Transit Co.,
Joplin, MO., May 8, 1984.

Senator John Danforth,
Senate Commerce Committee, Washington, DC.

Dear Senator Danforth: It is respectfully requested that the comments contained in this letter be included with the testimony submitted at the April 24, 1984 hearing. These comments are directed toward the need for Federal preemptions in matters pertaining to the regulation of interstate commerce and the establishment of a primary regulatory agency at the Federal level.

Radioactive materials and hazardous waste products in interstate commerce are being subjected to a host of overly burdensome and restrictive regulations that have been rashly conceived and promulgated into law at state and local levels. The effect of this regulatory morass is that it challenge the concept of a free and unencumbered interstate commerce system between the states. It also challenges the regulatory authority of the Federal Government granted it by the Constitution of the United States.

Section 1, Article 8, Clause 3 of the Constitution of the United States is known as the Commerce Clause. It is a simply worded statement reading in part, "The Congress shall have the power among other things, to regulate commerce with foreign nations and among the several states, and with the Indian tribes". Although not couched in the intricate phraseology in popular use today, there is no question what the intent of the Congress was when it authored this provision.

The authority of the Federal Government to regulate interstate commerce is further reinforced by Section 112 of the Hazardous Materials Act. In this section, there is a provision which states that regulatory requirements imposed by states or political subdivisions thereof, are not preempted if the requirement affords an equal or greater level of protection to the public than that afforded by the Federal regulation and does not unreasonably burden commerce.

States and local governments are unreasonably burdening commerce when they overlay the adequate regulations of the Federal Government published in the Code of Federal Regulations, Title 49.

Several states are unreasonably burdening commerce by establishing inordinate and excessive vehicle registration and driver training requirements that economically and operationally favor local carriers. This in effect negates the Federally granted operating authority of carriers foreign to the particular state having such regulation by placing them in an uncompetitive position with local carriers. This in turn forces them to violate the principle of common carriers serving all segments of the general public within the scope of their operating authority.

The banning of shipments through certain jurisdictional areas often results in the carrier having to travel circuitous miles over less desirable roads which measurably increases the accident risk potential.

Although interstate motor carrier equipment is inspected and maintained under the Federal Motor Carrier Safety Regulations set forth in Title 49, parts 390 through 397, some states have, or are considering, imposing their own inspections. This is a burdensome and unnecessary nuisance which is costly to the shipper.

Pre-notification and escorts intrigue state and local regulators and are having an adverse effect on the movement of radioactive and hazardous waste materials. It is doubtful that advance information regarding the movement of hazardous material shipments will have any beneficial effet on emergency response capability. Escorts which are also required by some states frequently cause delays at points of rendezvous by not meeting the transport vehicle in a timely manner.

State and local regulatory requirements can, with varying degrees of effort and expense, be complied with. The problem that is looming in front of the carrier industry and threatening to bring the movement of radioactive and hazardous waste materials to a halt is the aggregate effect of these regulations over long distance moves. As these and new regulations come into effect, it is likely carriers will be in a position of not being able to adequately comply with all the requirements necessary to move a shipment between two given points.

The invasion of state and local governments into what previously was the regulatory domain of the Federal Government is precedent setting. Failure of the Federal Government to become more aggressive in exercising its preemptive rights and establishing itself once again as the leading regulatory body, may only encourage state and local regulators to broaden their activities to other commodities in an effort to gain economic advantages.

If at any time Tri-State Motor Transit Co. can furnish information about interstate transportation, please feel free to contact us.

Very truly yours,

CHARLES H. MAYER,
Vice President,
Nuclear & Hazardous Materials Division.

OFFICE OF EMERGENCY MANAGEMENT
Portland, Oreg., June 6, 1984.

Hon. BOB PACKWOOD,
Washington, D.C.

DEAR SENATOR PACKWOOD: This is in response to your request for comments to be included in the April 24 hearings on hazardous materials transportation issues.

Based on my experience in Portland, there are two general ways in which I believe federal action could help local governments in their efforts to prevent and prepare for hazardous materials emergencies. The first is clarity as to what types of local regulatory actions, aimed at preventing accidents, are considered appropriate, and which are preempted by the authorities granted to the U.S. Department of Transportation (U.S. DOT) under the Hazardous Materials Act (HMTA). The second area, and much more importantly, is strengthening the emergency response system through financial assistance and professional development of emergency responders.

Preemption

There is concern among many local officials that any local ordinance aimed at preventing hazardous materials transportation accidents will be uniformly preempted by the U.S. DOT. There is some concern that the U.S. DOT is inappropriately heavy-handed in its application of its preemptive federal role, favoring commerce over public safety.

The City of Portland has developed no ordinances which have been preempted by federal authority. My casual review of the "inconsistency rulings" issued to date by the U.S. DOT have made me more, rather than less, comfortable with the DOT's application of Federal preemption. Indeed, in the area of highway routing where Portland has been active, the rulings were quite helpful and, I believe, sound.

Clearer articulation of the U.S. DOT's policy towards preemption would provide useful guidance to local officials in avoiding preemption problems. It would also help focus the national discussion of preemption on the utility of specific types of state and local laws. The question of preemption is one which I seriously believe needs such focusing, and the leadership of the Commerce Committee would certainly be important to achieve this.

There are several ways in which this clarity could be achieved. One which would be helpful to those of us in local government would be a general guide, aimed at an audience of state and local elected and public safety officials. The document should be based on preemption cases already reviewed, and to the extent possible on anticipated problems. It should stress the appropriate and important role for local governments in the regulatory framework, stressing enforcement of the Hazardous Materials Regulations (HMR) as well as encouraging use of the process for petitioning for specific changes to those regulations. Hopefully this would encourage state and local enforcement personnel—those working in the field and actually applying the regulations—to identify any specific problems with the national standards.

Any proposed substantive changes to the HMTA or the HMR pertaining to preemption should address specific types of local regulations such as routing, prohibitions, time-of-day restrictions, shipment notification, permits, etc. State and local officials would surely want to consider and respond to these specific proposals. I believe there should be no broadening of the general preemptive authorities of the U.S. DOT. Substantive and procedural changes should be especially avoided which would increase the likelihood of judicial review of preemption questions. To the extent possible, these questions should remain in administrative review.

Emergency Response

Most importantly, the Federal Government could more actively help local and State governments to prepare for emergencies. Surely you have heard over and over that it is local emergency response personnel who risk their personal safety to contain the acute dangers of a hazardous materials accident.

It can be easily understood why local officials are concerned about hazardous materials accidents after learning of the detailed consequences of an explosion of a propane rail-car, the heat and smoke of a fire involving a typical 9,000 gallon truck shipment of gasoline, or the dangers of a vapor cloud of ammonia or chlorine drifting across a city. Each of these products are manufactured, stored, and transported daily in the heart of Portland and most other communities. Consider the difficulties of rapidly evacuating an urban area 1 mile downwind from a chlorine vapor cloud; now consider an intensive care hospital, a day care center, or a prison in that area. Local concern about how to handle these emergencies will not go away.

Direct financial assistance for emergency preparedness would of course be useful. Specialized hazardous materials equipment and training are expensive. The average cost to develop a response unit and team is probably somewhere between $60–75,000; and about $30–50,000 each year to maintain, including training. Approximately sixty percent of the fire protection in this country is provided by volunteer departments, many with limited tax bases.

As with clarifying preemption, there are probably several ways to generate and distribute assistance to local governments. If creating new "revenue enhancement" authorities proves difficult, then the Commerce Committee may want to consider the existing program established through the National Oil and Hazardous Substances Contingency Plan.

Any federal initiative to assist local governments should build on existing local resources, to the extent possible. If federal funds are used to finance local planning for emergency response, the planning should be done by local personnel who know their community and will remain to implement the plans. Emergency response equipment should build upon existing fire service equipment.

I believe the most important single issue is professional development for emergency responders, primarily firefighters. Training should focus on both general firefighters who will rarely be involved in a hazardous materials incident, as well as the specialists who need sophisicated tools and techniques.

Although training for specialists is available at a few locations around the country, it is not easily accessible to all communities. A full range of training should be available within every region. Proposals have been previously made for regional training centers, and I believe, should be seriously considered again.

In addition to training, other ways to enhance the development of state-of-the-art emergency response should also be explored. A member of an emergency response team here in Portland recently mentioned the beginning of an association of hazardous materials emergency response teams. A national information clearing-house was also discussed. These and similar activities should be strongly supported by the appropriate federal agencies.

These comments are based on experiences from working with emergency response agencies in the Portland area to strengthen the emergency response and accident prevention system. I have tried to outline generally what I see as the two primary problems—concern over preemption and weaknesses of the emergency response system. There are a number of other specialists in the Portland area who would surely be willing to work closely with the Commerce Committee, the U.S. DOT, the Environmental Protection Agency and/or the Federal Emergency Management in reviewing and developing more specific proposals to address these problems. If we can be of help, please ask.

Thank you for the invitation and opportunity to comment.

Sincerely,

Bob Robison,
Hazardous Materials Analyst.

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